

## **The complaint**

Mr S is unhappy with the way American Express Services Europe Limited (AESEL) handled a dispute he made to it.

## **What happened**

The background of this complaint is well known to both parties so I will simply summarise it here and focus on giving reasons for my decision.

Mr S bought goods from a retailer ('the supplier') using his AESEL credit card. He says they arrived damaged and creased and he returned them in line with the supplier's instructions. He says the supplier only refunded around £150 of the total order value of around £700. He says the supplier instead sent him a box of clothes which he never ordered.

Mr S raised a dispute with AESEL which begun the chargeback process but discontinued this without refunding Mr S. He is unhappy with this and complained to it but its position was the same.

Our investigator didn't uphold this complaint.

Mr S asked for an ombudsman to look at things. In summary he says:

- the supplier did not provide evidence and refused to engage with him – in this case he should be protected by the chargeback scheme (as not being covered would facilitate fraudulent practices);
- he provided AESEL with information about what happened and photos to support his case – he could also have provided more evidence if AESEL asked for it such as a picture showing the volume of the parcel he returned; and
- he provided consistent and logical testimony while the supplier refused to provide sufficient evidence or an explanation of what had occurred.

The matter has come to me for a final 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 have considered the information submitted by the parties but won't be commenting on it all – only what I consider to be central. This isn't intended as a discourtesy to either party but reflects my role resolving disputes informally.

I am sorry to hear about Mr S's dispute with the supplier. However, it is important to note that AESEL is not the supplier of goods which this dispute centres around. Therefore, my role is to look at whether it acted fairly in light of its more limited role as a provider of financial services.

In considering if AESEL has acted fairly I have thought about how it could have helped recover Mr S's money. In that respect I consider Section 75 of the Consumer Credit Act 1974 ('Section 75') and the chargeback scheme to be particularly relevant.

#### *Section 75 doesn't apply here*

Section 75 in certain circumstances allows Mr S to make a '*like claim*' against AESEL for a breach of contract or misrepresentation by a supplier in respect of goods or services he purchased using his credit card.

Our investigator pointed out in their view that Section 75 doesn't apply here due to the specific financial limits applicable to Section 75. Mr S does not appear to dispute this but for completeness I agree with this view. In brief for Section 75 to apply to a purchase the price of the item (as attached by the supplier) needs to be greater than £100 (and no more than £30,000). I appreciate that Mr S spent more than £100 overall – but each item which is subject to this dispute was not individually priced more than £100.

It looks like a Section 75 investigation was not pursued by AESEL. But I don't think that was unreasonable here because it appears that it doesn't apply. And in any event I consider there would be difficulties in AESEL concluding a breach of contract or misrepresentation here for similar reasons to those I have gone into below.

#### *Chargeback*

The chargeback scheme does apply to this transaction. It is limited by the rules set down by the card scheme (in this case AMEX) and is not guaranteed to succeed – but it is often good practice for a card provider to pursue one where there is a reasonable prospect of success.

I have considered what the parties have said about the chargeback along with the wider evidence about the scheme rules to decide if AESEL acted fairly in handling the claim.

Mr S indicated to AESEL that he had cancelled/returned his purchase but not received a refund. As a result AESEL did start the chargeback process here and suspended the charge while investigating. It then contacted the supplier which raised a defence. It said it had correctly refunded Mr S for the item he had returned – but it said the other items it received from Mr S are not those he purchased from it – so a full refund could not be issued.

The supplier also told AESEL the items Mr S returned to it were not by brands sold by it. It concluded by saying it rejects the claim.

AESEL then got back in touch with Mr S to tell him that the merchant had defended the dispute and the credit would be reversed. There appears to have been further evidence which Mr S provided which AESEL looked at again – but ultimately it didn't escalate the dispute any further (citing a lack of conclusive evidence).

In deciding if AESEL acted fairly I have considered the types of things that AESEL can raise a chargeback for under the scheme in these circumstances. It could be argued that a chargeback code relating to a credit not being provided is most relevant here. In that Mr S says he returned goods in compliance with the supplier's policy but the credit has not been returned to his account as it should have been. Mr S appears to agree this is the most appropriate reason code for AESEL to have used.

However, even though there is arguably a valid chargeback reason here I think this dispute is not straightforward. In fact there is no dispute that Mr S arranged the return in accordance with the supplier's process and then sent back a package which the supplier confirmed it received. However, the additional layer of complexity here is the supplier's defence to say the items in said package (except one) were not in fact the items Mr S bought from it. If this were the case then Mr S would not be due a credit.

Mr S claims this is clearly a mix up by the supplier, in that it mistook his return for another customer return. That would be plausible. However, I can see the supplier wrote to Mr S with a note that said as part of its return process it examines each item returned and when it looked into his it found that the items returned (bar one) were not the items he indicated he was returning and were in fact items that would appear to have been purchased from another supplier entirely. It returned these items to Mr S with the note and said it would not refund him for the items he had not returned. The fact the supplier is alleging Mr S returned goods from brands it doesn't sell makes things far less clear. Looking at the requirements for a credit not processed chargeback doesn't in itself show that Mr S is clearly entitled to a refund in these circumstances.

I know Mr S has indicated he provided AESEL strong evidence supporting his dispute showing he received faulty items and returned these and that he could have provided more information if he was asked (such as the weight of the package he returned). But I don't think his evidence, particularly in light of the specific defence by the supplier is that clear. And even if he had provided AESEL with evidence such as the weight of the return package, in light of the allegations that other goods were returned in place of those ordered this would not necessarily make things clearer.

Mr S has indicated the supplier did not engage with him or provide a valid defence. But here I think the supplier has been clear to both Mr S and AESEL that it inspected the goods that were returned and some of the goods it received were not sold by it. So I don't think it has failed to refute the allegation that it did not issue a refund in error.

It is worth remembering that I am not determining if the supplier is right and Mr S is wrong here. Nor am I saying that Mr S acted unreasonably in the evidence he provided or how he engaged with AESEL. I am sympathetic to the frustration he has. But I am focusing on whether AESEL acted unfairly in the way it tried to help him get his money back keeping in mind the nature and limitations of the chargeback scheme. With that said it also worth remembering that the chargeback scheme does not have powers like a court to compel witnesses or third party evidence in order to determine dispute outcomes.

With all this in mind, and considering the nature of the dispute and the evidence submitted on both sides I don't think AESEL acted unreasonably in ultimately discontinuing the dispute and reversing the credit.

Even if I were to accept that AESEL did make a mistake and should have pushed the matter further (likely to some form of pre-arbitration or arbitration run by the card scheme) it doesn't change my findings here in any event. Because of the nature of the dispute and the arguments on either side, including the limitations of the card scheme to investigate further I would find it difficult to say the scheme is more likely than not to have ruled in Mr S's favour.

Mr S has not focused on AESEL's general customer service since the investigator gave their view. However, for completeness during my review I have also looked at its communication throughout the disputes process and can see it gave Mr S an initial answer on his dispute reasonably quickly. Although things did go on a for a while after this appears to be because AESEL considered further submissions from Mr S – which isn't unreasonable. It appears AESEL's communication with Mr S throughout the process was generally sufficient.

Overall, and for the reasons I have given above I don't think AESEL's handling of the dispute warrants an award of compensation. Mr S does not have to accept my decision and is also free to consider other routes to pursue the supplier, such as court, should he wish to do so.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 November 2023.

Mark Lancod  
**Ombudsman**