

The complaint

Mr L is unhappy because American Express Services Europe Limited (AESEL) rejected his disputed transaction claim.

What happened

In October 2022 Mr L was at an exhibition and placed an order with a merchant for a smart toilet. He paid with his AESEL credit card.

When Mr L got home he looked at the sales invoice and couldn't see which model he'd purchased. He tried to contact the merchant but couldn't get a response and became concerned that he'd been scammed. He raised a disputed transaction dispute with AESEL.

AESEL applied a temporary credit to Mr L's account and began an investigation. The merchant responded and disputed the claim. The merchant provided its sales invoice and its terms and conditions. AESEL found in favour of the merchant and the cost of the smart toilet was charged back to Mr L's account.

Mr L contacted AESEL again several times over the next few months. Eventually a section 75 claim was raised. AESEL rejected the claim. It said there was no evidence that the merchant had given Mr L misleading information about the goods. AESEL also said that the information supplied by Mr L wasn't sufficient to show that there had been a breach of contract.

Mr L remained unhappy and brought his complaint to this service.

Following the referral of the complaint to this service, AESEL reconsidered the matter and said that although it hadn't changed its decision on the outcome of the section 75 claim, it recognised that it could have handled things better. It offered £100 for any distress and inconvenience caused to Mr L as a result of having to contact AESEL several times.

Our investigator didn't uphold the complaint. He said he didn't think AESEL had made an error when it concluded that there wasn't sufficient evidence of a breach of contract or a misrepresentation. The investigator also said that AESEL's offer of £100 was fair in recognition that it could've raised the section 75 claim sooner for Mr L.

Mr L didn't agree. He said the goods still hadn't been delivered to him and that this was a breach of contract.

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.

Chargeback

When dealing with chargebacks, banks and providers of credit need to do so within the remit of the rules set by the relevant card scheme.

Chargebacks are a voluntary scheme. How it works is that the card issuers checks the complaint against the possible chargeback reasons to see what sort of evidence is required. This is so it can decide whether or not it can make a successful claim for the customer. Card issuers don't have to submit claims and they will only do so if they believe they have evidence that will support a chargeback claim so that it will be successful. This service expects card issuers to help if they can, but we don't expect them to raise a chargeback if there is little prospect of success.

I've looked at Mr L's request to raise a chargeback to see whether or not AESEL acted reasonably when it declined the chargeback.

When AESEL raised the chargeback, the merchant disputed it and provided a copy of the sales invoice and the terms and conditions. The sales invoice was signed by Mr L and the terms and conditions stated that orders placed at exhibitions couldn't be cancelled. The merchant also provided evidence to show that it had written to Mr L advising him that the goods were ready for delivery and that it had tried to contact him to arrange a delivery date but had received no response.

Taking all the available information into account, I'm persuaded that Mr L entered into a contract to purchase the goods. I don't think that AESEL acted unfairly here. The evidence provided by the merchant indicated that a chargeback claim would be unsuccessful.

Section 75

In certain circumstances section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold this complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that AESEL's response to the claim wasn't fair or reasonable.

The relevant law says that goods must be of satisfactory quality and conform to the terms of the contract. A misrepresentation is where an untrue statement of fact is made which induces a consumer to enter into an agreement.

Mr L has said that there's been a breach of contract because the goods haven't been delivered to him. He also says there's been a misrepresentation because he wasn't told what model he'd purchased, and he doesn't know whether the 50% discount the merchant told him he was receiving was a genuine discount.

I have no reason to doubt Mr L when he says the goods haven't been delivered. However, it appears that Mr L must bear some responsibility for this, because the merchant tried to arrange delivery, but Mr L didn't respond to arrange a date. In these circumstances I can't fairly say that the merchant has breached the contract by failing to deliver the goods.

The terms and conditions of the contract state that orders placed at exhibitions can't be cancelled. I haven't seen any evidence that Mr L has attempted to cancel the contract, but even if he did, the terms and conditions (which appear on the reverse of the sales invoice signed by Mr L) are clear. So I'm unable to say that the merchant has breached the contract by failing to cancel it.

Mr L has said that when he saw the goods at the exhibition, the merchant told him that if he purchased it that day, he could have a 50% discount. Mr L says there was only one model on display at the exhibition and when he couldn't see a model stated on the sales invoice, he became concerned as he didn't know which model he was going to receive.

I've thought about whether there's been a misrepresentation here. However, because Mr L hasn't taken delivery of the goods, it isn't known whether he will receive the same model as the one he viewed at the exhibition. For the same reasons, I can't say whether Mr L received a 50% discount. Because Mr L hasn't taken delivery of the goods yet, it's not possible to say whether a misrepresentation was made at the point of sale.

Based on the information I've seen, I haven't seen enough evidence for me to safely conclude that there's been a breach of contract or a misrepresentation. Therefore, I'm unable to say that AESEL acted unfairly when it declined the section 75 claim.

I appreciate that Mr L has found the disputed transaction process frustrating. Looking at what happened, I think AESEL could have handled things better. Mr L made repeated attempts to contact AESEL about the chargeback and I think AESEL should have raised the section 75 claim sooner. This wouldn't have made any difference to the outcome of the claim, but it would've saved Mr L several weeks of distress and inconvenience caused by having to chase AESEL. Taking this into account, I think the offer of £100 compensation by AESEL is fair.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 29 November 2023.

Emma Davy
Ombudsman