

## **The complaint**

Mr Y complained about how American Express Services Europe Limited (AESEL) responded to a claim to refund the cost of his daughter's dental treatment after she was unhappy with the results and the supplier ceased trading.

## **What happened**

Mr Y paid £1,769 on his AESEL credit card for dental treatment for his daughter, with a company I'll call "S" in 2023. He said that the treatment was a graduation gift. Mr Y said that S ceased trading before the treatment could be completed.

Mr Y contacted AESEL to put in a claim and ask for a full refund of what he paid.

AESEL considered the claim under section 75 of the Consumer Credit Act 1974 ("CCA"). It declined the claim on the basis that Mr Y was not the party that contracted with S, it was his daughter. It said that for there to be a like claim under section 75 there needed to be a clear link between the individual responsible for repaying the credit, the credit card provider and the supplier.

Mr Y made a complaint that his claim had been declined and AESEL rejected the complaint for the same reasons. Mr Y referred that complaint to our service.

One of our investigators considered the complaint. She said that there were technical criteria that needed to be in place for AESEL to be held liable under section 75. Part of those criteria included a valid debtor-creditor-supplier ("DCS") agreement. Our investigator said that as Mr Y wasn't part of the contract with S his claim didn't meet the criteria needed for AESEL to be held liable.

Our investigator also considered other ways that AESEL could have assisted Mr Y to get a refund, such as through chargeback, but ultimately found that there wasn't enough information to support a successful claim. She also considered how AESEL had handled the claim but didn't think they had treated Mr Y unfairly and didn't think they needed to do anything further.

Mr Y disagreed and so the complaint has been passed to me to make a 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've read and considered the evidence submitted by both parties but I'll focus my comments on what I think is relevant. If I don't comment on a specific point it isn't because I haven't considered it, but because I don't think I need to comment in order to reach what I think is the right outcome. This is not intended as a discourtesy but reflects the informal nature of this service in resolving disputes.

I need to consider whether AESEL – a financial services provider – has acted fairly and reasonably in handling Mr Y’s request for a refund. I have to make the distinction between the financial services provider (AESEL) and the supplier (S) here as we can’t look directly at what happened with S. I’ve gone on to think about what statutory protections and other methods are available in situations like this.

When something goes wrong with goods or services that were paid for, at least in part, by credit card, the card provider can offer to assist in some way. It might have a legal obligation to the account holder under section 75 of the CCA, or it might be able to help through other dispute methods such as “chargeback”.

Mr Y said he paid for dental treatment as a gift for his adult daughter. He said that he was involved in the negotiations for the contract and that he was offered a better price if he paid up front. I haven’t been provided with any invoices or contracts, but AESEL have confirmed the claim was for £1,769 and that was paid to S. Mr Y paid over two transactions, one for £1,519 which he said was for the aligners and ongoing treatment in February 2023, and a smaller amount of around £250 for retainers around October 2023. I’m proceeding on that basis.

Mr Y said that the treatment hadn’t been completed as the results weren’t what was promised, but the supplier had ceased trading, so he had to pay for his daughter to start the treatment again elsewhere. It seems that what Mr Y is unhappy with could be either a breach of contract or a misrepresentation by S or that the goods and services were defective; not as described; or not provided.

Chargeback allows for a refund of the money paid with a credit or debit card in certain situations, such as when goods or services have been paid for and not received. But there isn’t an automatic right to get a refund from the card provider. I would expect a card provider to attempt a chargeback if there was a reasonable prospect of success. This is determined by the claim being in line with the rules of the card scheme to which the card belongs.

AESEL didn’t attempt a chargeback and they declined any liability under section 75. I’ve focused my decision on the section 75 claim, but for completeness I will say that I agree with our investigator’s assessment of whether a chargeback might have been successful.

There are strict detailed conditions which set out what is needed to raise a chargeback dispute. These might include providing copies of the contract, evidence of what was agreed, and the relevant terms and conditions. It would also likely need to include evidence that the results weren’t as expected, the goods weren’t received or that the service wasn’t as described. I don’t think it is in dispute that none of this information was available. That’s not to say that Mr Y withheld information, it’s clear that S held a lot of the information that was required, and this unfortunately wasn’t available once they ceased trading.

Considering all of this, I have to conclude that AESEL wasn’t wrong not to pursue a chargeback for Mr Y. It didn’t have a reasonable prospect of success as it wouldn’t have been able to comply with the card scheme’s rules.

### Section 75

Section 75 of the CCA gives the account holder (the “debtor”) the right to make a like claim against their credit card provider for breaches of contract or misrepresentations by a supplier of goods and services. But certain conditions must have been met including the debtor-creditor-supplier (DCS) agreement that our investigator highlighted. I’m satisfied these transactions fall within the financial limits. But where there are additional parties, this can affect the DCS agreement.

The debtor in this case is Mr Y because he used his credit card to pay for the dental treatment. The creditor was AESEL as the card provider. The payment by credit card was for dental treatment provided by the supplier "S". But section 75 says that the debtor also needs to have a claim against the supplier. In order to make such a claim Mr Y needed to be party to the contract with S.

Mr Y doesn't appear to be a party to the contract with S, which presents a problem for his claim against AESEL under section 75. His name doesn't appear on any of the paperwork or correspondence from S that he's been able to supply. All of the available correspondence from S is addressed to Mr Y's adult daughter and it used what appears to be her email address. Mr Y may have been involved in discussions about the price and provided the money to pay for the goods and services but it is clear that the contract would be between his daughter and S. That's because the nature of the treatment is that it's a medical procedure and is individual and personalised to the person receiving the treatment.

Mr Y might suggest that the purchase was a gift and therefore he is part of the contract. But the limited paperwork doesn't reflect that, instead it shows that his daughter entered into the contract with S, so I think that Mr Y's gift was providing the means to pay for it.

The DCS agreement needed to exist between the debtor (Mr Y) the creditor (AESEL) and the supplier (S). From what I've seen, Mr Y had no contractual relationship with the supplier as it was his daughter that entered into that contract, so no DCS agreement was in place.

I have a lot of sympathy for Mr Y as he said he lost out when S ceased trading, but I haven't found that AESEL acted unfairly in declining his section 75 claim or in handling his request for a refund.

### **My final decision**

For the reasons explained above, I do not uphold Mr Y's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 7 August 2024.

Caroline Kirby  
**Ombudsman**