

In the matter of an Arbitration

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes
(Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Between;

~~XXXXXXXXXXXX~~

(the consumer)

And

ASOS plc

(the trader)

ORDER

Introduction to case

The case concerns items purchased by the consumer from the trader. The items consist of various items of clothing and shoes. The items were purchased by the consumer online from the trader's website. The consumer is resident in England.

The trader is in business as a retail seller of clothing, shoes and various other pieces of apparel. Its place of business is in the UK although for present purposes the sale was made to the consumer through its website; asos.com.

The consumer and trader entered into a contract under the laws of England & Wales when the consumer paid for the goods using her debit/credit card.

The referral to arbitration

The trader's website displays the terms and conditions under which the trader carries on business. Those terms & conditions are set out under the website address

<https://www.asos.com/terms-and-conditions/>

Under the trader's terms and conditions of sale, under the clause heading *Complaints or need to speak to us?*, any issue or issues the consumer has with the purchase, may be referred to the trader's '*Customer Care Team*'

That method prescribed involves the consumer initially making contact with the trader through it's '*Customer Care Team*' through web chat. This '*Customer Care Team*' would be a dedicated servants/agents of the trader who deal with consumer issues.

The trader's terms and conditions state;-

If Customer Care are unable to resolve your complaint to your satisfaction, you may refer your complaint to:

The Retail ADR (www.retailadr.org.uk):

- *Post: The Retail ADR, 12-14 Walker Avenue, Stratford Office Village, Wolverton Mill, Milton Keynes, MK12 5TW (Tel: +44 20 3540 8063)*
- *Email: Enquiries@cdrl.org.uk*

or

The EU Online Dispute Resolution platform:

www.ec.europa.eu/consumers/odr.

An issue or issues have arisen between the consumer and trader in connection with the supply made to the consumer. The consumer says she has contacted the trader under the method prescribed by the trader's terms and conditions. Following on from the consumer's contact with the Customer Care team, the consumer remains unsatisfied with the response to her complaint.

The consumer has referred the complaint to the London Arbitration Centre (a member of the EU Online Dispute Resolution platform) in accordance with the trader's terms and conditions. The London Arbitration Centre has agreed to supply to the consumer and trader it's Alternative Dispute Resolution services in accordance with it's rules and procedures.

The procedural history

By letter dated 11th February 2019, the trader's consent to ADR was requested by the London Arbitration Centre. By letter dated 26th February 2019, the trader was informed of the error by the London Arbitration Centre in not being previously aware of the trader's consent to submit the complaint to Alternative Dispute Resolution. In the same letter, the trader was supplied with a copy of the complaint made by the consumer and asked to respond within 21 days of the letter.

The trader has not responded to either letter in substance although both letters have been received by the trader and an acknowledgment given by them. The last communication by them being dated 14th March 2019 which stated;-

Hello Ayub,

I'm just getting in touch about your recent query.

I'm sorry to learn that you haven't received any further updates just yet. I just wanted to leave you an email to assure you that we haven't forgotten about your query and we're still looking into this so we can receive the best and most accurate outcome possible. At this stage, I'm unable to provide you with an exact time frame as to how long it'll be till we do receive an update but I can assure that as soon as we do either myself or another member of the team will pop you over another email, so we're keeping you in the loop at all times.

I hope this helps. If you do have any further questions or queries Ayub then feel free to get back in touch and I'll happily help you.

Best Wishes,

The Law

The Arbitration is carried in accordance with the provisions of ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015. The complaint is resolved by the London Arbitration Centre under its rules and procedure. The London Arbitration Centre are an approved entity under the aforesaid regulations.

The London Arbitration Centre rules ('the Rules')

The rules under which the dispute is resolved is set out at the website

<http://www.londonarbitrationcentre.com/Home/Rules>

The relevant rules in this case would be;

Rule 2.2

We will appoint an ADR official who will adjudicate on the dispute between the Consumer and Trader referred to us in accordance with our rules of procedure or any directions made by the ADR official in the course of the adjudication.

Rule 5

The timetabling for the Alternative Dispute Resolution (ADR) for Consumer disputes and any directions orders of ADR Official shall be binding on the parties and shall constitute part of the rules of procedure.

Rule 6

The dispute shall be resolved in accordance with the laws of England and Wales.....

Rule 9

The Parties will be required to file the claim, Response or reply in writing

The Law

The law relevant to the contract between the parties is set out in the Consumer Rights Act 2015 ('the Act'). It is important to say at the outset that if there had been any issue between the parties as to the interpretation of the trader's terms and conditions, this would have been resolved in accordance with Section 69 of the Act which states;-

(1) If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail.

It is important to make this observation at the outset although it is also important to mention here that the trader has not responded in substance to the complaint at all and therefore there is no issue on any of the trader's terms or conditions of sale.

The consumer's case

The consumer's case is a claim for a sum of £322.00 in compensation.

The consumer says that this claim is made on the basis of her complaint;-

I've made one online order on asos.com website on the 20th December and as I went through my order I've noticed two items were missing: Order: 377575497

1. Ugg Quinlin Lace Up Boot in Black- Black/ UK 4

Price: 150,00 QTY 1. Product Code: 7602436

2. SportMax Code Embroidered Scenic Sweater

Price: 27.00 QTY: 1. Product Code: 1310400

Also, they refuse to refund money on one item which was returned from this order:

Asos Design plisse layer detail midi body con dress

Price: 55.00 QTY:1 Product Code: 1371134

Total Amount of refused refund for this order: 232.00 GBP."

The consumer goes on and states;-

" I have also made another order: 377575497 on the 19th December and returned all items back however asos refused to refund on one item:

A Star Is Born midi dress with embellished silver pattern - Black/silver / UK 8

Price: 90.00 QTY: 1 Product Code: 7762371"

In legal terms the consumer's complaint against the trader can be summarised as;-

- (1) failing to make a supply; and
- (2) failing to refund the consumer on a cancelled order.

The trader's case

The trader has not made any response to the complaint to the London Arbitration Centre. In the letter dated 26th February 2019 to the trader from the London Arbitration Centre, the trader was advised;-

You have an opportunity to respond to the complaint before a decision is taken by an Adjudicator on the complaint. You should do so by completing and returning the attached form Response1. This should be returned to us within 21 days hereof.

The trader has however responded in the following terms by email dated 20th March 2019 timed at 8.21

Hello Ayub,

Thank you for bringing Ms Blinova's complaint to our attention, as raised to you at the London Arbitration Centre. I'm sorry for the delay in getting back to you whilst this was looked into by our Legal team.

I'd firstly like to introduce myself and the reason your query was brought to my attention. I work on the Customer Escalations team here at ASOS and our team pick up all escalated queries sent to us directly and through third party platforms such as yours.

I've taken a look at the complaint you've sent over to us with our Legal team and can confirm that as the account was closed by our Fraud team we're unable to discuss it or deal with the complaint via your platform.

I hope this helps but please let me know if there's anything further you need from ASOS and I'll be happy to get back to you.

Best Wishes,

Emily

ASOS Customer Care

This is not a satisfactory response to the complaint nor is this a valid reason for not supplying a response to the complaint. Any allegation of 'fraud' is a serious allegation to make and actions of a 'fraud team' (whatever this might be) cannot be used by the trader to 'shield itself' from a complaint. By failing to respond to the complaint, the trader is in breach of Rule 5.

Notwithstanding the material breach of rules of procedure, reference can be made to the trader's case set out in the trader's response to the consumer which is as follows;-

'Hello,

After an assessment of your account, we've made the decision to not issue a refund for your item.

It's very rare for items to go missing and ASOS have therefore made the decision to not accept any further orders from you.

In order to take this further, we recommend contacting your payment provider to dispute any lost funds. Your payment provider may be in touch with ASOS and we'll be able to provide information regarding your account to support their investigations. Once they're happy this is a genuine claim, they may refund your account. In the event further orders are placed, they'll be cancelled.

As we're unable to help you further with this, any emails received about this matter will be automatically closed down with no response.

Best Wishes, Customer Verification Team'.

The decision

If the trader fails to make a supply to a consumer under a contract of sale that is a fundamental breach of contract which entitles the consumer to repudiate the contract and seek compensation for her loss.

The reason given by the trader not to refund the consumer is wrong in law. The reason; *It's very rare for items to go missing* does not support the trader's decision not to refund the consumer in law or fact. If the trader had supplied evidence that the trader had in fact made the supply to the consumer, there might have been an inquiry. There would then, at least, have been an issue to be properly determined. The response by the trader to the consumer falls far short of the conduct expected of a trader when making online sales.

It is also worth mentioning that there is simply no recognised law which allows the trader to pass over the responsibility of refunding the consumer from the trader to the consumer's payment provider as the trader does in this case. Again, the response by the trader to the consumer falls far short of the conduct expected of a trader when making online sales.

There is no explanation why the trader has not refunded the consumer the money on cancelled orders. It is perhaps better that they have not done so in the light of the findings set out above.

Although not central to the complaint by the consumer, the trader states they have made a *"decision to not accept any further orders from you"*. It would be fair to say that the trader is entitled to decide whether or not to enter into a supply contract. That is probably a universal legal right and set out in the trader's terms and conditions when the trader states; *- Very occasionally, we may need to refuse or cancel an order or close or freeze an account..*

No finding is made in relation to this part of the trader's conduct. Given the problems encountered by the consumer and the finding made herein, it is probably unlikely that the consumer is going to be too concerned about not doing business with the trader again in any event.

ORDER

IT IS HEREBY ORDERED that the trader pay the consumer the sum of £322.00 within 14 days of the date hereof.

Date 20th March 2019



Signed

Mr Ayub Sadiq

ADR Official appointed by the London Arbitration Centre Limited



London Arbitration Centre Limited ;Correspondence address and registered office; LAC Postal Communications, 62 Tunstall Drive Accrington Lancashire BB5 5DG United Kingdom (Company registration no. 08945377)