

## **The complaint**

Mr M complains American Express Services Europe Limited (“Amex”) hasn’t treated him fairly when he disputed a payment for a purchase made using his credit card which he says he didn’t receive.

## **What happened**

It’s not necessary to go into large amounts of detail as the parties to the complaint are familiar with the background, but in summary:

- Mr M used his Amex credit card to purchase some Hi-Fi equipment from a merchant I’ll call “HF” for £359 on either 19 or 26 June 2023.
- HF employed a well-known delivery firm (“the courier”) to send the goods to Mr M. The courier said it had delivered the goods to his address at 9:30am on 27 June 2023. It said Mr M had signed for the goods and it supplied photos of a package outside a door and evidence of a signature.
- Mr M said he never received the goods and he had been at work at the time the courier had claimed to deliver them. After contacting HF and being informed they could not help, he contacted Amex to dispute the transaction.
- Amex accepted HF’s proof of delivery and rejected Mr M’s claim. Mr M complained about this but Amex stood by its decision. It said there was insufficient evidence to show that Mr M had a valid claim under section 75 of the Consumer Credit Act 1974 (“CCA”).

Dissatisfied with this response, Mr M referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the matter and reached the following conclusions:

- Section 28 of the Consumer Rights Act 2015 (“CRA”) stated that goods must be delivered to the consumer. There was no evidence that Mr M had arranged for someone else to accept delivery for him or for the courier to leave the item in a certain location.
- The courier had provided contradictory statements about the delivery. It had said the delivery had been signed for, but it had also said it had left the package by Mr M’s front door, which it had said was behind a locked gate.
- On balance, the goods had not been delivered to Mr M, and HF had been in breach of contract, something for which Amex was liable under section 75 of the CCA.

Our investigator recommended that Amex refund the £359 Mr M had paid for the goods.

Amex disagreed and asked that the case be considered by an ombudsman, so the matter has been passed to me to decide.

## 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.

Section 75 of the CCA allows a consumer who has purchased goods or services using a credit card to claim against their credit card provider in respect of any breach of contract or misrepresentation by the supplier of the goods or services, so long as certain technical conditions have been met.

It's not been argued that the technical conditions to make a section 75 claim have not been met in this case, so on this point I don't intend to go into detail. I'll say only that having considered the evidence I conclude the technical conditions are indeed in place.

The central allegation in this case is that HF failed to deliver to Mr M the Hi-Fi equipment he had ordered. The contract Mr M entered into with HF was a contract for the supply of goods. A failure to deliver the goods to Mr M (if it was agreed that the goods were to be delivered – which is clearly the case here) would be a breach of contract which Amex could be held liable for under section 75 of the CCA.

As our investigator noted, the CRA applies to contracts like the one Mr M made with HF. Our investigator referred to section 28 of the CRA but I think she meant to refer to section 29, which states the following:

*“(2) The goods remain at the trader's risk until they come into the physical possession of—*

*(a) the consumer, or*

*(b) a person identified by the consumer to take possession of the goods.”*

What this means is that unless HF (the trader) could show, on the balance of probabilities, that Mr M or someone authorised by him had taken physical possession of the goods, then any loss of the goods would be HF's responsibility.

I turn now to the evidence HF has put forward of the goods having been delivered to Mr M.

The evidence shows that this was meant to be a “signed for” delivery. The courier says it took a signature on delivery. However, it has also said that it left the package outside Mr M's front door and that this was considered secure because there was a locked gate leading to the door. The photos it has provided, of a package lying outside a closed door, suggests to me that what most likely happened is that the delivery driver, finding that nobody answered the door, left the package on the floor outside and input a signature on the system themselves.

The address appears to be a block of flats where the front door of individual flats opens to an external walkway which leads to a communal stairwell. It may well be the case that a fob is required to gain access to the walkway from the stairwell, but people such as other residents with flats on the same walkway, and their visitors, would also have had access to the same place Mr M's package was delivered to. It's entirely possible that the package fell into someone else's hands as a result. Regardless, I don't think the package ever entered Mr M's physical possession and so its loss was HF's responsibility. My understanding is that Mr M has not received a refund or a replacement item, and so I conclude HF was in breach of contract by failing to deliver the goods Mr M had ordered.

Due to the provisions of section 75 of the CCA, Mr M can hold Amex liable for this breach of

contract, and I therefore think it would have been reasonable of Amex to honour his claim. However, it failed to do so and now it must put things right by refunding the amount Mr M paid to HF, along with compensatory interest.

### **My final decision**

For the reasons explained above, I uphold Mr M's complaint and order American Express Services Europe Limited to take the following actions:

- A) Pay Mr M £359 – this being the amount he paid HF for the undelivered goods.
- B) To the amount in A), add 8% simple interest per year\*, calculated from the date it first wrote to Mr M declining his claim, to the date he receives a refund.

\* If Amex considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 May 2024.

Will Culley  
**Ombudsman**