

The complaint

A limited company, which I will refer to as T, complains that American Express Services Europe Limited treated it unfairly in respect of a chargeback.

What happened

T provides a platform allowing other businesses to sell services to their own customers. The customer will make a payment to T, but the service will be provided by T's client. (American Express has described the service provider in this case as T's subsidiary, but T has been consistent about describing them as its client – and T does not appear to own or control the service provider.)

An American Express card member in the US purchased a service from one of T's clients. That card member later instigated a chargeback against T, for the amount of €6,595.00.

American Express ultimately allowed the chargeback. T complained, and said that American Express's miscommunication had caused it to lose out.

Both parties agreed:

- American Express initially applied the chargeback on 6 June 2022, after a request from the cardholder.
- American Express reversed the chargeback on 15 June 2022, on receipt of various documents from T.
- After reviewing T's documents, American Express reapplied the chargeback on 17 June 2022 and requested further information from T. T eventually provided that information (but there is a dispute about exactly when and how American Express requested it).
- T and American Express exchanged further messages on 22 August 2022, and a member of American Express's staff told T that the cardholder was not eligible for a refund.
- On 30 August 2022, American Express told T that it was reversing the chargeback again.
- On 29 September 2022, American Express wrote to T to say that the chargeback would be reapplied to its account.
- There were no further reversals or reapplications of the chargeback after 29 September 2022.

I issued a provisional decision on this complaint in December 2023. Briefly, I said that I thought the chargeback decisions American Express had made were reasonable, bearing in

mind the information it had at the time it made those decisions. However, I thought American Express' communication with T was poor, particularly when it told T on 30 August 2022 that it intended to reverse the chargeback only to change its mind a month later.

I said I hadn't seen sufficient evidence to persuade me that American Express's poor communication caused T to miss a deadline or to suffer a financial loss, but I thought it had been caused inconvenience. I said I intended to order American Express to pay T £100 to compensate for that inconvenience.

American Express accepted my provisional findings in full, but T did not.

Briefly, T's representatives said:

- They consider that up until 11 August 2022 (when an American Express agent told them how to go about submitting an appeal) my provisional findings were fair. However, they followed American Express's instructions and were told on 30 August 2022 that their appeal had been successful.
- Up until 30 August 2022 T had not paid its client, and had not informed its client that the chargeback had been ruled in T's favour. It only paid its client after American Express had confirmed on 30 August 2022 that the chargeback had been reversed. T no longer has any prospect of recovering the funds from its client, and so its representatives believe that American Express should reimburse the money.

Our investigator then requested further information from T to evidence why it could not retrieve the money from its client. He noted that T had collected almost €4,000 on its client's behalf after American Express had reapplied the chargeback on 29 September 2022, and so he said it wasn't clear why T couldn't have retained some or all of those funds towards the chargeback amount.

At my request, our investigator also explained to T's representatives that I am required to take all the relevant circumstances into account. Those circumstances include the fact that American Express made an error in its communication – but they also include any payments made by (or requested from) T's own client, as well as any actions T took (or could have taken) to mitigate its loss.

Our investigator further explained that my view is that if T's client had already refunded the entire amount of the chargeback to T, it would not be fair for me to order American Express to reimburse that chargeback. Similarly, if T could have obtained reimbursement from its client but chose not to pursue that reimbursement, I consider that it would not be fair for me to require American Express to make a payment to T – regardless of any errors made by American Express.

T's representatives replied to say that they appreciated my position, but they would not be submitting any further information.

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.

Having done so, I have come to the same conclusions as I did in my provisional decision, for the same reasons. I now confirm those provisional conclusions as final.

I remain satisfied that American Express's communication with T from 22 August 2022 onwards was confusing. However, the fact that a firm has made an error does not automatically lead to a compensation payment; I must also consider the impact of that error.

Here, I am satisfied that T has had the opportunity to provide me with all the evidence its representatives wish to submit. Having considered that evidence carefully, I have not seen enough to persuade me that American Express's communication errors did anything to impact the ultimate outcome. I therefore make no award in respect of the chargeback itself.

Putting things right

I do think American Express's communication errors caused T some inconvenience, in that the errors will have caused T to make entirely unnecessary amendments to its records. But I still think that inconvenience was relatively minor, and that £100 represents fair compensation.

My final decision

My final decision is that I order American Express Services Europe Limited to pay T £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 26 March 2024.

Laura Colman
Ombudsman