

The complaint

Mr K complains about how American Express Services Europe Limited (AESEL) ("Amex") handled a claim he made in relation to a transaction on his credit card.

Mr K is being represented in the complaint by his wife who I'll refer to as Mrs K.

What happened

Mrs K purchased clothing items, from a company I'll refer to as "P", through Mr K's Amex credit card in May 2022. In July 2022, Mrs K says she instructed a firm I'll refer to as "F" to collect the items she wanted to return to P.

However, Mrs K says following the collection by F, the items weren't delivered to P. So Mrs K raised a claim with Amex.

In December 2022, Amex raised a chargeback for the amount of £190.99. P defended the chargeback. It said it hadn't received any returned items to its warehouse. Amex requested further information from Mr K. This was proof the items were returned in line with P's return policy, a copy of the postal receipt and shipping documents for the returned goods. Amex didn't receive a response from Mr K, so the chargeback claim was closed.

In April 2023, Mr K contacted Amex and provided an update from F. This said, *"There's a delay with your parcel in transit"*. However, Amex said this was insufficient and directed Mr K to contact P directly. Amex also said the claim wasn't valid under section 75 of the Consumer Credit Act 1974 ("s75"), as Mrs K made the purchase and Mr K received no benefit from it.

Amex issued its response to Mr K's complaint. It said it acknowledged that Mr K sent a return to the merchant, but it would need evidence to support that F lost the package to raise the chargeback claim.

Unhappy Mr and Mrs K referred a complaint to this service. Mrs K said she had been communicating with Amex since the issue initially occurred and that she had been trying to get a response from F. She said F collected the items from her and they were delayed in transit.

Our investigator looked into the complaint but didn't think Amex had acted unfairly. She said the claim didn't meet the requirements under s75, as Mrs K had used Mr K's card to purchase items for herself. She said as a result of this, there was no valid debtor-creditor-supplier relationship which is required under s75. She also said because Mrs K appeared to have used F, which wasn't affiliated to P, it was Mrs K's responsibility to ensure that the item was received by P. Our investigator also said there was a discrepancy in the address the return was sent to and the official return address on P's website. So, she said she didn't think Amex had acted unfairly or unreasonably when it declined to proceed with the chargeback claim.

Mrs K disagreed. She said Amex owed her a duty as she was married to Mr K. She said Amex's terms and conditions state that purchase protection and refund protection is provided for the card member and their respective partners/spouses.

Our investigator requested that Mrs K send confirmation that she was an additional cardholder. Mrs K sent a statement showing that Mr K was the cardholder. Our investigator

reviewed this and said Amex's payment protection was something it offered outside of s75 and it had no bearing on a claim under s75. She also said the items had been sent back outside the returns policy, so the claim would have likely been unsuccessful.

As Mr and Mrs K remain unhappy, the complaint 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.

As part of Mrs K's submissions for this complaint, Mrs K has detailed a personal situation that occurred to her. I am sorry to hear what happened.

I've read and considered the whole file and acknowledge that Mrs K has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

To make it clear, this complaint is about Amex, as Mr K's credit card account provider. It's not about P, who isn't a financial service provider and so, doesn't fall within the remit of the Financial Ombudsman Service.

Generally, where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute in two ways – s75 and chargeback.

S75

I've considered whether I think Amex unfairly told Mr K it couldn't consider a claim under s75.

Under s75, Amex are jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is P in this case.

In order for there to be a valid claim under s75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place. Mrs K made the purchase on Mr K's credit card which was supplied by Amex. I can see the invoice from P is addressed to Mrs K but the credit card transaction was in Mr K's name to P. As a result of this and because the goods were for Mrs K's benefit rather than Mr K's, I'm not satisfied a valid DCS agreement exists here.

In addition, there are also financial limits that apply to a valid s75 claim. Mr K needed to have purchased single items with a cash price of over £100, but no more than £30,000. I can see from the invoice that the amounts for each single item are less than £100. So even if I'm wrong about the DCS, I'm not satisfied the financial limits have been met for a valid claim.

Overall, I'm not satisfied that Mr K has a like claim against Amex, as he does against P.

Chargeback

A card issuer can attempt a chargeback in certain circumstances when a cardholder has a dispute with a merchant – for example where goods never arrived or where goods are faulty and not as described. Before a chargeback can be initiated by a card issuer, like Amex, it's generally expected that the cardholder has attempted to resolve matters with the merchant first.

Chargebacks aren't decided on the merits of the dispute between the cardholder and merchant, but rather they're decided on the relevant card scheme's rules. Chargeback isn't a legal right and there's no guarantee the card provider will be able to recover the money this way. In this case, the guidelines are set by Amex as the scheme provider.

In this case, there isn't an exact rule that fits the complaint Mrs K is making. The closest rule which may apply would be goods and services not received, as there is a requirement in there, for certain circumstances, in which the merchant is required to show that goods were not returned.

In this case, there is no dispute the P didn't receive the return. Mrs K has provided supporting information from F to show there was a delay with her parcel. However, Amex has pointed out that this doesn't show that the return was related to the order Mrs K made in May 2022. I've looked at the returns label and can't see any mention of the order number that Mrs K was provided for the order. In addition, our investigator has pointed out a discrepancy on the returns label that Mrs K has provided. This is that the return address is different to the address listed on P's website for returns. Mrs K hasn't provided any supporting information to show that she paid P to arrange the return and the email from F appears to have been sent directly to Mrs K to arrange the delivery. So I think it's more likely than not that Mrs K arranged the return delivery herself. As a result of this, because P supplied the goods to Mrs K and she received them, P no longer has any liability in the transaction. F, on behalf of Mrs K, didn't deliver the return goods to P, so Mrs K may consider pursuing a claim against F directly.

I've also looked at P's returns policy. I can see that the order was made on 3 May 2023. The order was delivered using next day delivery, so it would have likely reached Mrs K on 4 May 2023. P's website states, *"You've got 28 days to send something back to us from the day you receive it. Unfortunately we cannot accept returns after this time."* This would mean that Mrs K had until around 1 June 2023 to return the items to P. However, the returns label is dated 27 July 2023. So, this means that even if P had received the items at the time Mrs K instructed F to return them, P would not have likely accepted the return as Mrs K was out of time, as per its policy.

Overall, I've reviewed the actions of Amex when it raised the chargeback and the representment documents sent to Amex by P. Having done so, I'm satisfied the chargeback was raised correctly by Amex and I think it acted reasonably when it didn't challenge the pushback from P. So I don't think it needs to do anything further here.

Did Amex act unfairly or unreasonably in any other way?

Mrs K says Amex should review her complaint under s75 as its terms say its purchase protection and refund protection are applicable to Mr K's spouse, which is her in this case. She says this means there is a valid DCS relationship.

However, the purchase protection and refund protection are underwritten by an insurer. So Mr or Mrs K will need to direct a claim to the insurer, which is detailed in the terms and conditions Mrs K has sent us. If Mr or Mrs K are unhappy about the outcome of the insurance claim, subject to jurisdiction considerations, they may be able to refer a complaint to this service.

The purchase protection and refund protection are insurance policies and so, the terms of these policies are not implied into the contract for sale. And so, this means I can't consider the terms of the policy when reviewing a complaint under s75.

My final decision

My final decision is that I do not uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 December 2024.

Sonia Ahmed
Ombudsman