

## **The complaint**

Miss R complains that American Express Services Europe Limited will not refund the cost of goods she purchased with her Amex credit card, even though the goods were not delivered to her.

## **What happened**

In October 2023 Miss R bought four items from an online retailer, which I'll call "M". She bought two items costing £79.99 each, one item for £35.99 and one item for £99.99 – a total of £295.96, which she paid using her Amex card.

Miss R says that the items were not delivered to her. The delivery company provided a photograph of a parcel which Miss R noted included "... *no house number or location* ...". She said that by law the goods should have been delivered to her and not left outside.

M did not accept Miss R's claim for a refund, and so she referred the matter to Amex under its disputes procedure and then under section 75 of the Consumer Credit Act 1974 ("section 75").

Amex investigated what had happened, but was satisfied that the parcel had been delivered to Miss R's address. The delivery company's photograph had shown it outside a set of patio doors. Amex said that they and other features in the photograph matched publicly available images of Miss R's property.

Amex also considered whether Miss R might have a claim under section 75. It noted however that the necessary financial conditions had not been met, since all of the items which Miss R had bought were priced under £100.

Miss R referred the matter to this service. Our investigator did not, however, recommend that the complaint be upheld, for broadly the same reasons as Amex had decided not to uphold it. Miss R asked that an ombudsman review the complaint.

## **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.

In deciding what is fair and reasonable, I must take into account, amongst other things, any relevant law. I will discuss relevant law below, but I will first deal with the facts of the case.

Miss R's complaint is that the delivery company (and therefore M) did not deliver the goods. The evidence I have seen shows that her parcel was left on her own patio in her own back garden. Even though no house number is visible in the photograph provided by the delivery driver, there are sufficient identifying features to match the address to which the parcel was delivered to Miss R's own address. It is apparent too that the delivery driver could have accessed the garden through an unlocked gate and then left the parcel out of sight of passers-by.

Miss R says that, if a delivery driver could have gained access to her garden, so could anyone else and they could have taken the parcel. I note however that she has not gone so far as to say that the parcel in fact went missing or that she was otherwise unable to collect it from where it was left. She has simply said that it was not delivered to her and was not left in a safe place. Had her goods been taken by someone else so that she was unable to collect them, I think Miss R would have mentioned that.

I think it more likely than not, therefore, that Miss R did take possession of the goods. It follows that, whether or not those goods were “delivered” to her, Miss R has suffered no material loss, since she did nevertheless receive them.

But, even if I were to take a different view on that point, it does not follow that her claim for a refund should succeed. As I have indicated, I must take into account any relevant law in deciding what’s fair and reasonable. That includes any agreement which Miss R had with M about delivery of her goods. The delivery order said that it included home delivery and included Miss R’s address. It did not say that delivery must be made to Miss R in person. And, while Miss R has asserted that, by law, goods must be delivered to her and not left outside, she has provided nothing to support that. I note that M’s website clearly contemplates the possibility that customers will not always be available to accept delivery in person. That is not unusual for an online retailer, and I do not believe I can fairly say that there was any agreement that delivery would be made in person to Miss R. Goods did not, for example, have to be signed-for.

Given the evidence that Miss R did in fact receive what she paid for and the lack of evidence that M failed to do what it had agreed, I think it was reasonable of Amex to decline a refund under its own disputes procedure.

I turn then – briefly – to section 75. Where a customer who pays for goods using a credit card has a claim for breach of contract against the supplier, they can, subject to certain financial and other conditions, bring a like claim against the credit card provider. That does not apply, however, to any claim “... *so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100...*” [section 75(3)].

Miss R’s total order was for £295.96, but none of the four items had a cash price of more than £100. The most expensive item cost £99.99. It follows that Amex acted reasonably in declining to consider a claim under section 75.

Miss R has complained that Amex suggested that she pursue a claim under section 75 when it should have known, because of the financial limits, that it was bound to fail. I agree that it might have been apparent from the information which Miss R had already submitted that that was the case, but I don’t believe it was unreasonable of Amex to ask for all the relevant evidence before reaching any firm conclusion on the point. I would not expect it to decline any claim until it had ensured that it was aware of all the relevant facts.

### **My final decision**

For these reasons, my final decision is that I do not uphold Miss R’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss R to accept or reject my decision before 26 November 2024.

Mike Ingram  
**Ombudsman**