

The complaint

Mr T complains about an unsuccessful chargeback on his credit card held with American Express Services Europe Limited trading as American Express (Amex).

What happened

In July 2023 Mr T made a purchase with an online retailer using a third-party payment provider (who I'll refer to as 'B' throughout), which debited his Amex credit card.

When the goods weren't received Mr T raised a dispute with B which wasn't upheld, and which Mr T brought to our service for review. This complaint about B was resolved under a separate reference.

Mr T also raised a chargeback claim with Amex in October 2023, which was unsuccessful. This was because the chargeback scheme operator (Amex in this case) stated it had received evidence from the merchant confirming the goods were delivered.

Mr T complained to our service about the outcome of the chargeback. We made Amex aware of Mr T's complaint about the outcome of the chargeback, and it issued a final response not upholding the complaint. As part of its response it referred to the goods being held by customs, and made reference to it being a cardmembers responsibility to ensure goods being purchased aren't banned or restricted in the destination country. As Mr T remained unhappy with Amex's response the case was reviewed by one of our investigators.

Our investigator upheld Mr T's complaint. He said the evidence provided by Amex didn't support its position that the goods Mr T was disputing had been delivered, or were being held by customs. He said had Amex pursued the chargeback he considered it would likely have succeeded. When it came to setting out how Amex needed to put things right, our investigator didn't recommend it needed to make any award of redress. He said this because he noted Mr T had already accepted a payment in resolution of his complaint about B, which was about the same disputed transaction; and as such any further redress would put Mr T in a position of betterment.

Amex accepted our investigator's outcome; Mr T didn't. He said B's settlement offer was presented as a gesture of goodwill, and therefore not on the basis of it admitting any liability that his claim hadn't been successful. Mr T said he'd made it clear to B when accepting its offer that it was on the basis he wasn't accepting its outcome on the disputed transaction.

Mr T asked for an ombudsman's review, so the complaint's 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.

The information in this case is well known to Mr T and Amex; and I've seen our investigator set out to Mr T the chargeback process and our service's approach to these types of cases

within his view and following phone call. So, I don't intend to repeat this information here. I've focused my decision on what I consider to be the key points of this complaint. I don't mean to be discourteous to Mr T or Amex by taking this approach, but this simply reflects the informal nature of our service.

I think it would be helpful for me to set out from the beginning that I've reached the same conclusions as that of our investigator, for broadly the same reasons. I acknowledge this will be disappointing to Mr T.

Amex has agreed with our investigator's assessment of the complaint; but for completeness I've considered the details.

As I've set out above, Mr T initially raised a dispute about a transaction he made in July 2023 with another party, B. After Mr T didn't receive his desired outcome with B, he contacted Amex to dispute the transaction.

Amex raised a chargeback through the Amex chargeback scheme, which was defended by the merchant. The evidence Amex has provided this service, and which it relied on when appearing to not pursue the chargeback further, was that the goods being disputed were delivered to Mr T in July 2023. But when responding to Mr T's complaint in December 2023, Amex appears to suggest that the goods were being held by customs, either because import tax was due before they would be released, or that the goods are banned or restricted from entering the destination country. Amex has said it's a cardmembers responsibility to ensure goods are neither banned nor restricted. Because of this Amex didn't uphold Mr T's complaint and said it wouldn't take his dispute further.

Like our investigator I've reviewed the evidence provided by Amex, and I'm not persuaded it was reasonable for it to not have perused the chargeback further. I say this because the legible evidence provided by Amex shows a delivery note and shipping label for items described as 'ring', with a weight of around 0.01kg.

The item Mr T was disputing was one or more batteries, which made up part of the order. Having researched the battery in question on the merchant's website, it specifies its weight as 1.9kg – so, a significant discrepancy from the shipping label information presented by the merchant.

Reviewing the relevant customs authority website, it confirms that it or the delivery company contact an individual directly when any customs duties are due. And from what I can reasonably tell there's no evidence that batteries are banned or restricted by the authority. Mr T has confirmed he received no contact from customs or a delivery company in order to pay any tax for the release of the goods.

It therefore follows I'm satisfied, from the evidence available to me, that Amex ought reasonably to have pursued Mr T's chargeback claim. And I consider, on balance, there were reasonable grounds for success based on the evidence I've seen.

I've therefore gone on to consider what would be reasonable redress in resolution of the complaint.

As set out above, Mr T accepted a settlement offer on his complaint against B about the same disputed transaction. The offer accepted was for more than the value of the goods that are disputed.

Mr T says B's offer was to resolve his complaint as a gesture of goodwill, rather than an acceptance that his dispute was upheld. Mr T says he made it clear to B that by accepting

the offer he wasn't accepting its outcome about the goods not being received. He's also said there was no caveat set out to him about the possibility of it claiming back the funds at a later date.

As our investigator set out in his view and in his following phone call with Mr T, our service's role is to put a customer back in the financial position they would have been in had an error not occurred.

I've seen B's initial gesture of goodwill offer presented to Mr T in its final response dated November 2023. Within the response B set out that if it later became aware the card issuer (Amex) had refunded the payment, it would recover the payment it made to Mr T's account. So, I consider when Mr T was made aware of B's increased offer, it reasonably follows it was on the same terms.

But in any event, by accepting B's offer Mr T was essentially put back in the financial position he was in before the disputed transaction took place – as it was (albeit modestly) above the value of the payment being claimed. So, while I acknowledge Mr T's point about it being a gesture of goodwill offer, with no admittance of liability, the end result is that he has already received redress for the loss he suffered.

Had his chargeback claim been successful through Amex, or were I to now direct Amex to refund the value of the transaction in dispute, Mr T would in effect receive double redress for the same event, and would be placed in a position of betterment; which isn't in line with this service's approach to redress.

I am sorry to disappoint Mr T as his strength of feeling on this matter is clear. But for the reasons I've set out above, I can't agree that further redress is due. So, it therefore follows I'm satisfied Amex doesn't need to take any further action in resolution of this complaint.

My final decision

My final decision is that I'm upholding Mr T's complaint about American Express Services Europe Limited trading as American Express, but I'm not directing it to take any further action in resolution.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 17 March 2025.

Richard Turner
Ombudsman