

The complaint

Mr J complains that American Express Services Europe Limited won't help him in his dispute about the delivery of clothes from a merchant.

What happened

In April 2023 Mr J used his American Express Services Europe Limited (Amex for short) credit card to pay £1805.99 for an assortment of high-end clothing. When it was delivered Mr J said the box it was delivered in was compromised and a jacket and a belt were missing from it. The jacket and belt cost £1020. So he complained to the Merchant, but it wouldn't replace them or refund him. So he complained to Amex.

Amex looked into the matter and raised a chargeback with the Merchant. The Merchant responded with significant evidence to show all the items had been put in the box for delivery and that the box had been delivered to Mr J's delivery address intact. So Amex has said it didn't consider Mr J's dispute should be successful through either chargeback or Section 75 of the Consumer Credit Act 1974 (CCA for short).

Mr J didn't think this was fair, so he brought his complaint to our service. Our investigator looked into the matter. Overall, she didn't think Amex had acted unfairly by declining Mr J's request for a refund. Mr J didn't agree. So the complaint was passed to me to decide.

Earlier this month I issued a provisional decision explaining that I thought Amex had acted fairly and giving reasons for doing so. I invited both parties to provide me with further arguments and a deadline by which to do so. Amex agreed with my position. Mr J chose not to respond.

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.

I should make very clear that this decision is not about the Merchant which isn't a financial services provider and doesn't fall within my remit regarding chargeback or Section 75. Whatever the issues there maybe with the Merchant and just because Mr J says he has lost out here, it doesn't necessarily follow that Amex has treated Mr J unfairly or that it should refund him. And this decision is solely about how Amex treated Mr J. I hope this point is clear.

There's no dispute that Mr J used his Amex card to make the purchase of clothes. So I don't think Amex did anything wrong by charging it to his account.

In certain circumstances, when a cardholder has a dispute regarding a transaction, as Mr J does here, Amex (as the card issuer) can attempt to go through a chargeback process which is managed by the network. I don't think Amex could've challenged the payment on the basis Mr J didn't properly authorise the transaction, given the conclusion on this issue that I've already set out.

Amex is required to consider whether there is a reasonable prospect of success when it is considering whether to go through the chargeback process or not. If it does go through the process, then it must do so properly. And if Amex takes the chargeback as far as it can then the network will then decide on the matter. So Amex isn't solely responsible for the decision whether to refund or not, when going through the chargeback process. And it can fairly decide to not proceed at any stage, if it doesn't think there is a reasonable prospect of success.

Here Amex raised a chargeback (and provided a temporary credit to Mr J) which was vigorously defended by the Merchant. The Merchant responded with detailed evidence around the packing, packaging, and delivery of the clothing to Mr J's delivery address. It has provided persuasive photographic evidence on this matter. It shows the box as it was when it arrived at the delivery address that Mr J nominated. Amex considered this and decided that the chargeback no longer had a reasonable prospect of success. So it didn't continue with the chargeback and reversed the temporary credit.

I've considered the substantial and persuasive evidence that the Merchant provided. And I think a chargeback didn't have a reasonable prospect of success, essentially for the same reasons as I'm about to describe in relation to S75 of the CCA. So it's my position that Mr J hasn't lost out because Amex didn't pursue the chargeback any further.

A business such as Amex can only be held responsible under S75 of the CCA if certain requirements are met *and* if there is breach of contract or misrepresentation of the contract and if there is that it means that Mr J has lost out.

It appears that Amex didn't consider S75 of the CCA as it makes no mention of doing so in its representations to this service. However in this case I don't think this makes a difference because I don't think Mr J has lost out because of this. And that's because I don't think there is sufficient evidence here for a s75 claim to be successful.

I've considered the evidence here particularly the photographic evidence of the box on delivery and at the delivery address. I'm satisfied this demonstrates it was delivered. I'm satisfied on balance that the photographic evidence shows that the box hasn't been tampered with at the point of delivery to such an extent that the missing items could have been removed. And I'm satisfied from the audit trail of the delivery process that on balance those items were in the box to go out for delivery. So I'm persuaded the items Mr J claims were missing were in the box when it reached the delivery address. And once it was correctly delivered the Merchant had fulfilled its obligations in delivering items correctly. If the items were subsequently removed before Mr J received them at the delivery address then the Merchant nor Amex are responsible for that.

So although Amex has apparently not considered s75 of the CCA here I don't think Mr J has lost out as a result. I say this because I think it likely that had it done so it would not have considered the claim should be successful. And that's because of the persuasive evidence that the clothing ordered was properly and entirely delivered correctly.

For the sake of completeness I'll address some of Mr J's key points. Unlike Mr J suggests the time gap between delivery and Mr J raising his dispute isn't a persuasive issue for me to

decide one way or another. I think the evidence of delivery is persuasive. However if Mr J didn't look through the box for some time after delivery that does provide opportunity for parties unknown to remove those items-but this wouldn't be the responsibility of the Merchant or Amex as the items had been delivered and at that point their liabilities regarding delivery conclude.

Mr J says the box was damaged on arrival. The evidence I've seen shows the box as whole on arrival and uncompromised. And Mr J doesn't explain why he accepted what he describes as a box which "*blatantly looks tampered with*". And I note that there is a noticeable difference between the condition of the box (as shown in photographic evidence from the merchant) between when it was delivered and one of Mr J's photos of the box when he said he looked at it. So I think the items were delivered properly.

In response to my provisional decision Mr J chose not to respond within time. Amex accepted my position as set out in my provisional decision. Accordingly I see no persuasive reason to deviate from my position as set out in my provisional decision. Accordingly Mr J's complaint is unsuccessful.

I appreciate this isn't the decision Mr J wants to read for both the reasons of being unsuccessful in his complaint and because I've found that all the items were delivered to the correct address. Nevertheless Amex treated him fairly.

My final decision

For the reasons set out above, I do not uphold the complaint against American Express Services Europe Limited. It has nothing further to do on the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 28 May 2024.

Rod Glyn-Thomas
Ombudsman