

The complaint

Mr A complains that American Express Services Europe Limited (which I'll call Amex) won't provide a refund for goods which he says he paid for but did not receive.

What happened

In December 2023 Mr A bought a laptop direct from the manufacturer, which I'll call "D". He paid using his Amex credit card. Mr A says that he took delivery of a parcel from D, through a courier firm, as expected. However, when he opened the parcel, he found that it contained a laptop box which was stuffed with cardboard. There was no laptop.

Mr A tried unsuccessfully to resolve the matter with D. It said that the laptop had been delivered.

Mr A therefore contacted Amex, which in turn contacted D. D provided evidence from the courier firm that the parcel had been delivered to Mr A. Its tracking information included information about the weight of the parcel, which was consistent with it containing a laptop.

Amex decided therefore that it should not provide Mr A with a refund under its chargeback procedures.

Mr A later provided Amex with photos of the box which he had received. He said they indicated that it had been opened and re-sealed. Amex said this evidence had been received outside the relevant timeframe and so made no difference to the outcome. It applied a credit of £50 to Mr A's account, but otherwise said that it would not be taking matters any further.

Mr A referred the matter to this service. One of our investigators considered what had happened but did not recommend that the complaint be upheld. She thought the evidence showed that the laptop had been delivered to Mr A, and so there were no grounds for a refund.

Mr A did not accept the investigator's assessment and asked that an ombudsman review the case.

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.

Where goods are paid for using a credit card but are not delivered, it may be possible for a customer to obtain a refund through the chargeback process. In the case of most card issuers, chargeback is overseen by the card schemes. For Amex transactions, however, Amex is both the card issuer and the acquirer which signs up merchants to its own scheme. Its own chargeback scheme does not therefore involve an external arbitrator. That means that the decision not to make a refund was its own.

It is not clear whether Amex considered a claim under section 75 of the Consumer Credit Act 1974 ("section 75"), but the investigator concluded in any event that such a claim would not have been successful.

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships between Amex, D and Mr A are present in this case, and the transaction falls within the relevant financial parameters. I have therefore considered Mr A's dealings with D.

Mr D's claim against D is very straightforward. He says that D is in breach of contract because it didn't deliver his laptop. And, he says, he has a "like claim" against Amex because he paid for the laptop using his credit card.

It is not in dispute that Mr A received a parcel from D. To that extent, D's evidence of delivery does not take things very much further. The issue is what was in the parcel – a laptop or something else.

I think it more likely than not that D packed and sent the laptop to Mr A. The opportunities for someone to remove the laptop from its packaging and replace that packaging before it was despatched and without arousing suspicion would have been very small.

I accept it's possible that the laptop could have been replaced after despatch but before delivery. But neither the courier nor Mr A appear to have noticed any obvious damage to the packaging on delivery – although I accept that Mr A says he noticed more than one kind of tape on the box.

Taking all of that into account, I do not believe I can safely conclude that the laptop was not delivered.

It is not for me to say whether Mr A does have a claim for breach of contract against D, but in the circumstances I do not believe I can fairly say that Amex should have made a refund under section 75 or under its chargeback process.

My final decision

For these reasons, my final decision is that I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 February 2025.

Mike Ingram

Ombudsman