

The complaint

Mr W complains about the way American Express Services Europe Limited handled his request for a refund of a payment he made using his credit card.

What happened

In January 2024, Mr W purchased a virtual reality headset from a retailer. He says that before making his purchase he checked with a staff member in the store whether he could return the headset if its use caused him nausea (a possible side effect of using these types of goods). Mr W says the store confirmed he could return it so long as there was no damage to the item and it was returned in the original packaging.

Later that same day Mr W returned to the store because the headset had caused him vertigo and nausea. He asked to return it for a refund but the store didn't agree to accept it back because Mr W had opened the box and used the headset. Mr W left the headset at the store and complained to the retailer's head office. The retailer didn't agree to provide Mr W a refund, so he approached American Express for help in getting his money back.

American Express initially considered the possibility of obtaining a refund using the chargeback process. It contacted the retailer which responded to say that its terms and conditions didn't provide for refunds in these circumstances and that Mr W's claim for a refund was therefore not justified. American Express then considered whether it had any liability under section 75 of the Consumer Credit Act 1974 ("section 75"). However, it closed that claim because it said Mr W did not respond to its request for information.

Mr W then received a refund for the headset by speaking to another store. However, he remained unhappy with the way American Express had dealt with his claim.

Our investigator recommended the complaint be upheld. She thought that American Express ought to have communicated better with Mr W throughout the claim process. She said that no clear answers were given to him concerning why the chargeback and section 75 claims were unsuccessful. She said it was aware of Mr W's vulnerabilities and it had not done enough in the circumstances to provide appropriate communication to him. She recommended American Express pay Mr W £300 compensation for the upset and inconvenience it caused him.

American Express accepted that outcome but Mr W didn't. In summary, he was of the view that American Express ought to pay a higher sum of compensation to him.

The complaint has been passed to me for a decision.

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 understand Mr W has now received a refund from the retailer. I don't therefore need to

consider American Express' liability to refund him any further either through a chargeback or section 75. This is because he would not be entitled to any additional money back through either of these routes on top of the full refund he has already received from the retailer. I'll therefore focus on how American Express handled Mr W's claim and what steps, if any, it needs to take to put things right.

Mr W has expressed in detail how upsetting he has found the experience with both the retailer and American Express in trying to obtain a refund. I can understand why this was so frustrating for him. Like the investigator, I think American Express could have dealt with Mr W's claim for a refund better and I'll set out in more detail what I think about this and why later in this decision. However, in deciding what is fair and reasonable in this complaint it is important to separate out any impact the retailer's actions had on Mr W. This is because the retailer is not party to this decision, nor are American Express responsible for their actions.

It appears to me, the root cause of Mr W's frustration, upset and inconvenience was due to the retailer's decision not to agree to a refund. This was outside of American Express' control. I also have to be mindful that just because Mr W felt very strongly that American Express was required to refund him, this wasn't necessarily correct.

I say this because a chargeback does not guarantee a refund and is governed by a strict set of rules which need to be adhered to. Whether or not Mr W may or may not have had a strong legal argument for a refund from the retailer, that doesn't necessarily mean a chargeback would succeed because different rules apply to those than what a Court might consider.

Further, when assessing a section 75 claim, American Express would be assessing whether it would have liability either jointly or severally with the retailer. It wasn't necessarily acting solely for or on behalf of Mr W as the claim was being made against it. Having said this, if it was clear that there had been a breach of contract or misrepresentation by the retailer, I would expect American Express to assist its customer by putting things right.

It seems to me that American Express didn't approach the chargeback in the best way it could have. There are a variety of different 'reasons' a chargeback can be initiated, each covering different types of scenarios. American Express seems to have presented it to the retailer under a reason code that didn't appear to be particularly relevant to the circumstances here. However, I don't think that ultimately made any material difference.

This is because the retailer defended the chargeback on the basis that it was not required to provide a refund as the original packaging of the headset had been opened and it's returns policy was clear on this issue. While Mr W says he was verbally told something different (and I have no reason to doubt what he says) prior to purchase, I don't think this would have been sufficiently strong evidence for a chargeback to be successful against the written terms.

I want to make it clear this doesn't mean I don't believe Mr W, quite the opposite, I find what he's said to be plausible. But, I don't think the chargeback process would likely have sided with him had it been pursued further as it is a far more rigid framework and was more likely to favour the written terms of sale.

Mr W says that in accepting the retailer's defence, American Express was agreeing with the retailer. He said the retailer had stated in its defence that Mr W's claim was fraudulent and by accepting the defence American Express was agreeing that he was committing fraud. I can see why this upset Mr W, however, from what I've seen American Express has not said to him that the reason the chargeback failed was because it believed he had raised a fraudulent claim. American Express' response simply said that the retailers terms didn't allow

for returns.

While I can understand how strongly Mr W felt when seeing the retailer's response, this was the retailer's words, it didn't come from American Express, nor was that the reason the chargeback didn't succeed. However, I can't see that American Express made any reasonable effort to explain this to Mr W or provide any assurances to him at all. I can therefore understand why he became more upset and frustrated. American Express was aware that Mr W was vulnerable and that these kinds of words and accusations were likely to cause him a great deal of upset. I don't think it acted appropriately as it failed to respond to his concerns in any meaningful way.

American Express then sought to consider a claim for a refund under section 75. It says that Mr W failed to provide information it had asked him for and therefore closed the claim without considering it further. I don't think this was fair. While American Express' email to him says that Mr W needed to send in evidence and complete a claim form, it also said that if a chargeback claim was already in considered and evidence had been supplied under that he should let them know.

American Express ought to have been aware it had already considered a chargeback claim for Mr W. It ought to have also known that Mr W had already sent in plenty of evidence to support his claim. It ought to have also been aware (as Mr W had told it a month before this email) that he was vulnerable and the impact dealing with this claim was having on him. American Express could and should have taken some initiative and just considered the claim with the evidence it already had.

Instead, American Express decided to close the section 75 claim a month later because Mr W didn't respond to the email. I don't think this was fair or reasonable in the specific circumstances of this case. I think American Express should have considered the claim.

However, even if it had taken steps at that time to begin considering a section 75 claim, there is no guarantee it would have provided Mr W with an answer before the retailer refunded him in full anyway. I understand the refund credited Mr W's account on 13 March 2024, which was around two weeks after American Express asked Mr W to complete a form and submit evidence for a section 75 claim to be considered.

I'm therefore not persuaded that American Express' failings in promptly dealing with the section 75 claim ultimately made any material difference to when or how Mr W might have received a refund. After all, its possible American Express may not have upheld his claim (which it was entitled to do). While Mr W has referred to the extreme efforts he had to go to in order to get the retailer to refund him, this isn't something I can reasonably hold American Express responsible for.

Overall, I don't think American Express' communications with Mr W were as helpful as they should have been and I think some of its actions impacted Mr W's mental health adversely. However, I have to balance this out with the fact that I think the main cause of Mr W's upset was from the retailer's actions. American Express didn't help matters and arguably made this harder than it needed to be. But I don't think even if American Express had done things perfectly it would have alleviated the majority of the upset which was caused by the retailer.

Taking everything into consideration, I think American Express should pay Mr W £300 compensation for the upset and inconvenience it caused in the way it handled his request for a refund.

My final decision

For the reasons given above, I uphold this complaint and direct American Express Services Europe Limited to:

- Pay Mr W £300 compensation for the upset and inconvenience caused.

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

Tero Hiltunen
Ombudsman