

The complaint

Mr D complains American Express Services Europe Limited has acted unfairly by not refunding a payment he made using his credit card.

What happened

In January 2024 Mr D purchased an item of jewellery online, from a company I'll refer to as C. He paid £4,900 using his Amex credit card.

When the item arrived, Mr D found it was the wrong size so returned it to C, who arranged for an exchange of the item. Mr D received the replacement but also found this wasn't suitable, so returned it to C and requested a refund.

Mr D says he returned the replacement item on 30 January 2024 using a third-party courier company I'll refer to as H – but it wasn't received by C, so it didn't agree to refund the payment.

Unhappy, Mr D complained to C, saying he'd returned the item correctly by following its return process, so considered he was due a refund. As C didn't agree, Mr D contacted Amex, in an attempt to claim a refund under Section 75 of the Consumer Credit Act 1974 (CCA).

Amex reviewed matters but declined Mr D's claim. It didn't agree there'd been a breach of contract as Mr D hadn't adhered to C's return process. It added, Mr D had dropped his item at H's drop off point, rather than arranging a collection. It also said it appeared the item had been returned to the wrong address. Amex didn't change its position after Mr D complained, so he referred matters to this Service.

An Investigator here reviewed matters but concluded there'd been no breach of contract or misrepresentation as there wasn't sufficient evidence Mr D had followed C's returns process. They also explained, while it was unclear whether Amex had raised a chargeback in this case – which is another means of a consumer requesting a refund via their card issuer – that would have also been unsuccessful. As such, they didn't consider Amex had acted unfairly in how it handled Mr D's claim.

Mr D didn't agree, in summary he said:

- He'd followed C's returns process as it confirmed during a call that dropping the parcel at H's drop-off point was acceptable. And he'd used the return label included in the package – which C later confirmed was correct.
- In support of this, Mr D referred to C's returns process which he considered allowed him the choice of whether to drop of the item or have it collected. He also noted he'd previously made a successful return in the same way.
- Amex hadn't handled his claim fairly as it didn't adequately consider the evidence he provided – which he considered to be a breach of contract.

With no resolution the complaint has 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.

I think it would be helpful to explain, in this decision I'm only able to consider how Amex handled the dispute Mr D raised with it. I'm not able to consider the actions of C or H, as that isn't within the jurisdiction of this service for these types of complaints.

When a consumer approaches their credit card issuer with a problem with a purchase made using their card, there are two avenues via which the business can help. The card issuer can try to reclaim the amount (or part of the amount) the consumer paid on their card, via the dispute resolution mechanism operated by the card scheme (Amex in this case), and which is often known as "chargeback". Where the payment has been made using a credit card, it can also consider honouring a claim under section 75 of the CCA. I will consider each of these mechanisms in turn below.

Chargeback

Chargebacks are not guaranteed to succeed, the recipient of the funds (C in this case) can choose to challenge or defend a chargeback if it doesn't think it is valid. But I would expect Amex to attempt a chargeback if there was a reasonable prospect of success. If a chargeback is challenged by the other side to the dispute, I would expect Amex to look carefully at the submissions made by the other side and make a decision on whether to continue pursuing the chargeback. I would not expect Amex to pursue it further if the submissions showed it no longer had a reasonable prospect of success.

Our Investigator said it was unclear whether a chargeback was raised by Amex but pointed to evidence where C referred to it. They concluded, whether a chargeback had been raised, or not, it was unlikely to succeed as C had provided a defence, namely that Mr D hadn't followed the returns process.

Based on what I've seen I think it most likely a chargeback was raised here, it seems to have been done under the reason code "Credit not presented". I say that because I've seen C's defence for the chargeback which in summary said Mr D didn't follow the returns process as he didn't contact C correctly before arranging the return.

In this case, Amex appear to have done as I'd expect and pursued the chargeback under reason code "Credit not presented". This seems reasonable as Mr D says he returned the items and didn't receive a refund – which is one of the reasons this code can be used for.

One of the ways the merchant can challenge a dispute made under this rule, is to show the return policy was provided at the time of purchase, and the consumer did not comply with this. Here C provided Amex evidence its terms and conditions, which were available at the time of purchase, required Mr D to call it before arranging the return and it says he didn't do that. Based on this defence, it appears Amex made the decision not to pursue the chargeback, which seems reasonable.

I say that because, while Mr D has now provided this Service screenshots of two telephone calls made to C, in which he says he was told he could drop the item off to H, I've not any evidence Mr D provided Amex this information at the time. So I don't think it was unreasonable for Amex not to continue pursuing the chargeback, as there was no reasonable prospect of success.

I should also say, even had Mr D provided this evidence to Amex at the time, I don't think it would have changed the outcome here. That's because the dates of these calls don't coincide with Mr D's return of the item he's now disputing. One is dated a number of weeks prior and coincides with Mr D's first return – that isn't in dispute. The other is dated after he'd returned the item.

In this case, Amex did as I'd expect and appear to have pursued the chargeback claim as far as it considered it could. It did so under the relevant reason code, but because C provided evidence that Mr D didn't process the return as required under its terms and conditions, he wasn't entitled to a refund. While Amex had the option to pursue the chargeback further after C defended it, I also think it's reasonable it chose not to do so.

As such, I can't agree Amex handled Mr D's chargeback claim unfairly.

Section 75 of the CCA

Section 75 of the CCA allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

One condition which needs to be met for section 75 to apply to a purchase is the claim must relate to an item with a cash price of over £100 and no more than £30,000. Mr D paid £4,900 for the item of jewellery, so that's been met here.

A further condition is that there needs to be what is known as a debtor-creditor-supplier ("DCS") agreement in place. That was also met here.

I also need to be persuaded there has been a breach of contract or misrepresentation and if there has, what the resolution should be.

Has there been a breach of contract or misrepresentation?

Misrepresentation

For the purposes of this case, a misrepresentation is a false statement of fact which induces another party into a contract which leads them to suffer a loss.

While Mr D has said there have been misrepresentations by C, he's complaining C hasn't refunded him as it should in line with its terms and conditions. As such, I think it would be more appropriate to consider this argument under a breach of contract.

I've also seen nothing that would represent a false statement of fact by C, which induced Mr D to enter a contract with it. So I've therefore gone on to consider whether there has been a breach of contract.

Breach of contract

A breach of contract occurs when one party to the contract fails to discharge its obligation to the other. These obligations may come about as a result of the express term of the contract, or because of terms implied by legislation.

Mr D's primary argument here is that he returned the item in line with C's terms and conditions and as such should receive a refund.

C's terms and conditions are clear as to the steps Mr D needed to follow in order to return the item, and based on the information I've seen I'm not persuaded Mr D complied with these. I say that for several reasons, which I'll go on to explain.

The first stage of C's return process was to call C. As I've explained above, to evidence this Mr D has provided this Service screenshots of two calls he made to C on 12 January and 16 February 2024. However, Mr D didn't receive the second item, until around 23 January 2024. And he returned it to C, via H on 30 January 2024. As such, while I don't dispute he may have spoken to C about a return, I'm not persuaded it was the return relevant to this claim. As such, I can't agree this represents a breach of contract, as Mr D doesn't appear to have followed C's return process.

Mr D has pointed to the second term within C's return process, which he considers says he was able to drop-off the parcel. This says:

2. You may choose (a) to use our pick-up service and agree on a pick-up date with our logistics partner, or (b) a parcel drop-off at any of our logistics partner's network locations within the eligible return period. You may be asked at this stage to provide information about the product for us to make a first assessment of the condition of this product;

While I understand Mr D's point, I don't think this term can be read in isolation, it follows from the requirement to call C, and as I've said above, I've not seen any persuasive evidence that this happened.

I also note that while Mr D contacted C's messaging service on 23 January 2024, and was given a return number, he was then told to arrange the return of the parcel as he did in the previous instance. Mr D has said he followed the same process previously, and dropped the parcel off to H, but he's not been able to provide this Service evidence of the previous return. In any case, even had he returned the previous item in the same way, I still wouldn't be persuaded there'd been a breach of contract here. That's because I'm looking here at the return of the replacement item and whether Mr D processed this return in the way he was required. But based on what I've seen, it doesn't appear he did.

I think it's also important to say, there was specific reference to the drop-off service within C's terms – this said:

"For our drop off service, please drop-off the product at the agreed logistics partner's network location".

Here, I've also seen nothing to say Mr D agreed with C which of H's network locations it would drop the item off at. So I'm not persuaded this condition was met either.

In addition, C says Mr D didn't return the item to its address, and, in part, as a result of this, Amex made the decision to decline his section 75 claim. Mr D has provided this Service a message he sent to C to ask if the address was correct, however, based on what I've seen he sent this after returning the item. I've also not seen evidence C confirmed it was correct, as he says. Mr D says he used the return label provided by C, but having looked at the address he sent the item to, it doesn't match the address listed on C's website. As such, I'm not persuaded Mr D returned the item to the address C required within its terms and conditions. And as C says it wasn't received a refund couldn't be processed. Given this as I'm not persuaded there's been a breach of contract here, Amex appear to have acted fairly in declining his section 75 claim as a result of this also.

Taking everything into account, I'm not persuaded there has been a breach of contract in this case, so I don't think Amex acted unfairly in declining Mr D's section 75 claim.

Customer service

Mr D has raised concerns over the service he was provided by Amex, both that it was not thorough enough, and it repeatedly closed the claim without satisfactory resolution.

The requirement here is on Mr D to provide Amex the necessary information in which to raise a dispute. But I can see Amex asked Mr D for evidence in which to do this, as I'd expect. And then appears to have attempted to claim a refund through the chargeback process as well as consider a claim under section 75, but neither were successful. Given this, there isn't anything more Amex were able to do.

While Mr D's said Amex repeatedly closed his claim, I note it communicated with him throughout and as above, took his claims as far as it reasonably could. Ultimately, while I appreciate Mr D was unhappy with the outcome Amex came to, that doesn't mean his claims weren't handled as they should.

While I appreciate this will come as a disappointment to Mr D, I can't say Amex has acted unfairly in how it's handled his claim. As explained Amex appear to have processed his chargeback claim in the way it should, but it was unsuccessful. And section 75 is prescriptive in the way a claim can be made and based on what I've seen, there's no evidence there has been a breach of contract or misrepresentation here. So I don't think Amex acted unfairly in it's handling or decline of Mr D's section 75 claim, so I won't be asking it to do anything here.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 8 July 2025.

Victoria Cheyne
Ombudsman