

## **The complaint**

Mr A complains American Express Services Europe Limited ("American Express") didn't do enough to help get a refund for a purchase made on his credit card.

## **What happened**

In July 2024, Mr A bought a phone online from a company I'll call "J", paying via his American Express credit card. Mr A realised he'd ordered the wrong colour, so placed a second order, with the intention of returning the first phone.

Having received the first phone, Mr A says he returned it to J via an approved third party. Having received a package from Mr A, J however said it didn't include the phone rather some soap, so didn't agree to issue a refund.

Mr A therefore contacted American Express for help. American Express raised a chargeback, which is a means of asking J to provide a refund via rules set by the card scheme provider, which is also American Express in the circumstances. J defended the chargeback, saying the phone hadn't been returned, so it didn't agree a refund was due. Considering the information, American Express closed the dispute in J's favour.

Having complained to American Express, Mr A referred his concerns to our service. One of our Investigators looked into what happened. She said American Express had raised the chargeback and J had confirmed receiving the package Mr A returned, however it didn't contain the phone. Considering this evidence, our Investigator thought American Express was reasonable not to dispute the chargeback further.

Our Investigator also considered whether Mr A had lost out as American Express hadn't considered whether he had a valid claim under Section 75 of the Consumer Credit Act 1974 ("Section 75"). Our Investigator said there wasn't evidence to show J had breached the contract, rather it appeared J hadn't received the returned phone. So, she didn't think Mr A would have received a refund had American Express considered a Section 75 claim.

Mr A disagreed. He said American Express should have challenged his dispute further as it's clear he's been the victim of a scam and the returned package had been intercepted, removing the phone. As the matter remained unresolved, 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.

As Mr A paid for the phone on his credit card, there are two options through which American Express may have been able, to provide a refund, be that through a chargeback or a claim under Section 75. I've therefore considered below whether I think American Express acted fairly in both processes.

## *Chargeback*

In certain circumstances, when a cardholder has a dispute with a merchant (J), as Mr A does here, American Express (as the card issuer) can attempt a chargeback. The process involves the card issuer disputing a payment made on the card through a dispute resolution scheme operated by the companies which run the card networks, which in this case is also American Express.

The chargeback scheme provides an opportunity for a card issuer to ask the merchant for a refund under set chargeback codes. The merchant can then accept the chargeback, or provide a defence, setting out why it doesn't think a refund is due.

American Express raised a chargeback, so I've focused on whether it acted fairly having received the merchant's defence.

American Express raised Mr A's dispute under reason code "*credit not received*", which I find reasonable, on the basis Mr A said he'd returned the phone but hadn't received a refund.

The merchant defended the chargeback on the basis it had correctly delivered the phone, and although it had received a returned package from Mr A, this hadn't included the phone, rather soap, so didn't agree a refund was due. American Express considered all the information it had been provided and didn't think it had enough to dispute the transaction further, so closed it in J's favour.

While I appreciate this answer may come as a disappointment to Mr A, I think American Express was reasonable in not challenging the dispute further. Having received the merchant's defence, it has been presented with two versions of events, Mr A's that he had returned the phone and J's that it hadn't received the phone back. So, on this basis, American Express didn't have enough evidence to show J had failed to provide a refund after receiving the phone from Mr A.

In considering this evidence, American Express didn't think it had enough to show the merchant had failed to provide a refund when one was due – on the basis J evidenced it hadn't received the phone back. So, while I appreciate Mr A clearly set out that he considers the returned parcel was intercepted, I don't think American Express was wrong to not dispute his chargeback further, as I think it was reasonable in concluding it didn't have enough evidence to show J owed a refund in line with the chargeback scheme rules.

## *Section 75*

As Mr A paid for the phone on his credit card, I've also considered whether he may have been able to achieve a refund if a claim under Section 75 had been considered.

Section 75, says that, in certain circumstances, if Mr A paid for goods or services, in part or wholly on his American Express credit card, and there was a breach of contract or misrepresentation by the supplier, American Express can be held jointly responsible.

American Express didn't consider a Section 75 claim on behalf of Mr A, so like our Investigator, I've considered whether not doing so caused Mr A a loss.

There are conditions that need to be met for Section 75 to apply. One of these is that there needs to be a 'debtor-creditor-supplier' (DCS) agreement in place between the parties to the transaction. The other is that the item purchased must fall within set financial limits. I'm satisfied Mr A's claim, meets both these requirements.

### *Has there been a misrepresentation or breach of contract?*

To say there had been a misrepresentation, I'd need to be satisfied that a false statement of fact induced Mr A to buy the phone. However, I'm not aware of this being the case, rather having realised he'd ordered the phone in the wrong colour, Mr A chose to return it.

Rather, it could be considered Mr A is saying J's failure to provide a refund is a breach of its contractual returns policy.

Mr A says J should have told him to return the phone in store, which is a requirement for certain other high value items it sells. However, J's refund policy which I've reviewed on its website, sets out that it would refund the cost of the phone, if it were returned via a number of options, including in store or through the post. So, I haven't seen anything to suggest J breached its terms here. J didn't decline to provide a refund because Mr A returned the phone via a courier, rather because it said the package didn't include the phone.

Taking this into account, had American Express considered whether there had been a breach of contract, I don't think it would have concluded there had, based on the evidence available.

This is because if J didn't receive the phone back, it's under no obligation to refund Mr A under its contractual refunds policy. And in the circumstances, I don't think there's sufficiently persuasive evidence to say J had breached its contract with Mr A.

I say this, as although it's accepted Mr A did return a package to J, there's no compelling evidence that the phone was included or actually delivered to J. Mr A has raised serious concerns that the package was intercepted with the phone being removed. While it's possible something may have happened to the package in transit, American Express isn't able to compel witnesses or evidence and would be more limited than a court to investigate what had happened.

It's important to note, that I'm not saying what happened here, rather that there are several possibilities, such as a third-party interfering with the package. However, when considering its obligations under Section 75, I don't think American Express would have been provided sufficient evidence that meant it reasonably concluded a breach had taken place, or that it therefore owed a refund to Mr A.

So, while American Express didn't consider whether it was jointly liable under Section 75, I don't think this led to a loss to Mr A for the reasons set out above.

### *Conclusion*

In conclusion, while I appreciate this answer will likely come as a disappointment to Mr A, I won't be asking American Express to do anything further. I think it correctly raised a chargeback and was reasonable in its decision not to take this further, having received J's defence.

While American Express didn't raise a Section 75 claim, I don't think this caused Mr A a loss, as I haven't seen enough to say there was a misrepresentation or breach of contract, to mean American Express was jointly liable to refund the value of the phone.

As a result, I don't think American Express treated Mr A unfairly, so don't uphold this complaint.

**My final decision**

For the reasons set out above, I don't uphold this complaint.

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

Christopher Convery  
**Ombudsman**