

## **The complaint**

Mr C complains that American Express Services Europe Limited (Amex) didn't refund a credit card transaction through its disputes process.

## **What happened**

In February 2024 Mr C placed an order with a retailer I'll call F for £614.88 using his Amex credit card. When he didn't receive the parcel, he contacted F and its courier to find out what had happened. He says the evidence provided by F and its courier shows the parcel wasn't delivered to him. He's also said the courier acknowledged that they hadn't followed the correct process during the delivery.

Mr C complained to F and attempted to get a refund. When he wasn't successful, he contacted Amex to see if it could help him get his money back.

Amex raised a chargeback, but F provided evidence to show the items were delivered to Mr C's address, and the chargeback failed. Unhappy with this outcome, Mr C sought advice from a local charity on what he could do next. They let him know that Section 75 of the Consumer Credit Act 1974 (Section 75) may apply here and so he contacted Amex about this. Amex didn't think Mr C had a successful claim under Section 75 because it didn't have a relationship with the courier. It explained that it didn't routinely advertise the possibility of Section 75 claims and that as this was its policy, it didn't agree it had acted unfairly. However, it offered Mr C £50 for the inconvenience this may have caused him.

Unhappy with Amex's decision to decline his claim and its reasoning for not informing him of Section 75, Mr C referred the case to this service. One of our investigators considered the case and didn't think Amex had acted unfairly.

Mr C didn't agree with our investigator's view, so his complaint has been passed to me for review and 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.

This includes the comments received following my provisional decision. I issued a provisional decision saying:

*The transaction Mr C disputed was made using a credit card. So, Amex could have considered the claim through the chargeback process or under Section 75.*

### *Chargeback claims*

*Chargeback isn't a legal right and isn't guaranteed to get a customer a refund. That said it's good practice for a credit provider to attempt a chargeback where the circumstances are appropriate and there is a reasonable prospect of success. Strict*

*rules apply to chargebacks, and these are set out by the card scheme operator, in this case American Express. These rules include timeframes for chargebacks to be raised, details of what evidence is needed for the claim and the evidence needed to defend a claim.*

*Limited information has been provided to this service about the chargeback, but it appears Amex raised a chargeback for goods and services not being received. Looking at the chargeback reason codes available under American Express' scheme this is the most relevant code.*

*The scheme rules say that for a chargeback to be raised under this code the customer must show they didn't receive (or only partially received) the goods or services. The rules also say that in order to challenge the chargeback the merchant must be able to show that the goods or services were delivered to the customer's address.*

*Based on the information Mr C had provided, Amex raised the chargeback disputing the payment to F. However, F responded to defend the claim by providing evidence to show that the parcel was delivered to Mr C's address and was received by a person at that address. I appreciate Mr C argues that he didn't receive the parcel but under the scheme rules F only needed to show that the parcel was delivered to Mr C's address, which it was able to do. This meant the chargeback failed.*

*I can understand why Mr C would have been disappointed with this outcome. But, based on the evidence, I don't think Amex have acted unreasonably in deciding not to pursue the chargeback claim further.*

## **Section 75 Claims**

*Amex didn't make Mr C aware of the possibility of a Section 75 claim either when he first brought the claim to it or when his chargeback claim failed. Amex told Mr C it doesn't advertise Section 75 claims and that this is company policy. Nevertheless, it offered Mr C £50 for any inconvenience that may have been caused.*

*Whilst Amex is within its rights to decide not to advertise the availability of Section 75, I don't think this is the same as making a customer aware of the availability of Section 75 where there is the prospect of a valid claim. As the experts here I think it would be reasonable for Amex to make the customer aware of the possibility of a Section 75 claim where appropriate (as was the case here). However, I think the £50 offered to Mr C for the inconvenience he may have been caused is reasonable.*

*Section 75 makes the provider of credit (Amex in this case) equally liable where there is a misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, it will only apply when the criteria for a Section 75 claim are met. This includes the need for the cash price of each item disputed to be more than £100 and no more than £30,000. In addition to this Section 75 will only apply when there is a direct relationship between the debtor, creditor, and supplier otherwise known as a DCS agreement.*

*In this case Amex said neither it nor Mr C had a direct relationship with the courier, this meant there wasn't the necessary DCS agreement. However, F had a responsibility to ensure either it or its agents delivered the items ordered. This means the relevant relationship here is the one with F and not the courier. I say this because the courier was acting as F's agent and so F remain responsible for the actions of the courier. So, I don't agree that a relationship between Amex and the courier needed to*

*exist for a Section 75 claim to be possible. There is a direct relationship between the debtor (Mr C), the creditor (Amex), and the supplier (F and through F, its agents). It follows then that I think the necessary DCS agreement did exist for a claim against F, and Amex could have considered Mr C's claim under Section 75.*

*I must also consider the cash price of the items purchased and whether these meet the criteria for a Section 75 claim. Having looked at the items Mr C purchased I can see that these were all individual items that were sold separately. And all but one item had a cash value of £100 or less. Given this, there wouldn't have been a valid Section 75 claim for those items. However, one item had a cash value of £314.99 and so met the criteria for a Section 75 claim.*

*This then leads me to consider whether a Section 75 claim for the £314.99 item would have been successful. So, I've thought about whether the evidence shows either a misrepresentation or breach of contract occurred.*

*Having carefully considered the evidence, I'm inclined to agree that there has been a breach of contract here.*

*Under the Consumer Rights Act 2015 (CRA), the contract between F and Mr C is to be treated as including a term that F must deliver the goods to Mr C, unless they have agreed otherwise.*

*Looking at the evidence available I can't see that any alternative agreement was made, for example, Mr C agreeing to collect the goods, or agreeing that the goods could be delivered to a safe place or another person on his behalf. So, I'm not persuaded that a different arrangement for the delivery of the goods was in place.*

*This means F needed to deliver the goods to Mr C (rather than someone else living at the same address) and it chose to use a courier to fulfil this implied term under the contract between it and Mr C. Given this, I think it's reasonable for F to be responsible for the action or inaction of the courier.*

*I can see from the evidence, the courier has accepted it didn't follow the correct process in delivering the goods, and, the only instructions F had provided to the courier were to deliver the goods to Mr C. I accept that the goods were delivered to Mr C's address but on the evidence available, I'm not persuaded the goods were delivered to Mr C. And it seems the courier and F agree this was the case. So, it follows that I don't think F have adhered to the implied contract term to deliver the goods to Mr C. So, I'm satisfied there has been a breach of contract here.*

*Taking the available evidence into account, I'm satisfied that had Amex considered Mr C's Section 75 claim fairly, the claim for the item with a cash value of £314.99 would have succeeded and Amex is equally liable with F under Section 75 for F's breach of contract in failing to deliver the goods to Mr C. It follows then that I think it would be fair for Amex to refund the cost of the item for £314.99 to Mr C.*

To put things right I said Amex needed to:

- *Rework Mr C's credit card account as if the payment of £314.99 had been refunded at the time Mr C contacted Amex about the dispute.*
- *Refund any associated interest and charges; and*
- *Pay Mr C the £50 offered for the distress and inconvenience it has caused him, if it hasn't done so already.*

Mr C responded to let us know he accepted my provisional decision, but Amex didn't respond. I haven't seen any new evidence that would make me depart from my provisional decision. So, on the evidence available and for the reasons set out, I'm not persuaded Amex acted fairly in this case

### **My final decision**

My final decision is that I partly uphold this complaint and require American Express Services Europe Limited to:

- Rework Mr C's credit card account as if the payment of £314.99 had been refunded at the time Mr C contacted Amex about the dispute.
- Refund any associated interest and charges; and
- Pay Mr C the £50 offered for the distress and inconvenience it has caused him, if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 August 2025.

Charlotte Roberts  
**Ombudsman**