

The complaint

Mr G complains that American Express Services Europe Limited (Amex) declined his claim made under Section 75 of the Consumer Act 1975 ('Section 75').

What happened

Mr G bought a car from a dealership I'll refer to as X. The car was for him to use, as well as his wife and son. Mr G's wife had completed a 'test-drive' of the car, for which she paid X £99 (as an authorised additional card holder) using Mr G's Amex credit card. Mr G made two further payments towards the car using his Amex credit card. Whilst Mr G made the payments, X provided receipts for these in the name of Mr G's wife.

When X first attempted to deliver the car, Mr G identified a number of dents and scratches that were not present at the time the car was bought. X took the car back and attempted some repairs. On the second delivery attempt, Mr G identified a small dent on the bonnet that had not been present at the time of purchase. Mr G says he spoke to the manager of X, who suggested he accept delivery of the car and then bring it in so it could resolve the problem. Mr G wrote the following note of the discussion on the delivery document:

"There is what appears to be a stone chipping badly painted. Manager [at X] agreed to have this repainted at [X's garage] by previous appointment. If the painting cannot be done on the spot a courtesy car will be provided."

When the car was taken into X's garage, X refused to carry out any repairs to the dent. Mr G obtained a quote of £768 for the repair, and made a Section 75 claim for this cost to Amex. However, Amex refused to consider his claim as it said there was no 'Debtor-Creditor-Supplier' (DCS) agreement here. So, Mr G referred a complaint to our service.

Our investigator was satisfied there was a DCS agreement in place and Amex should have considered this Section 75 claim. The investigator was satisfied the damage Mr G complained about wasn't there when Mr G paid the deposit and recommended Amex pay him £768 to have the repairs carried out (plus interest at 8% simple if the repair had already been carried out). The investigator said Amex should also pay Mr G £100 compensation for the frustration and inconvenience caused by how they handled this claim.

Mr G initially accepted our Investigator's recommendation, but Amex asked for an Ombudsman to review this complaint. Amex said there was insufficient evidence of the damage claimed for. In response to Amex's arguments, Mr G asked for a total of £400 compensation plus the cost of the repair.

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.

Subject to certain criteria, Section 75 provides protection for consumers purchasing goods and services using credit. Section 75 gives Mr G an equal claim against Amex for any breach of contract or misrepresentation by X.

I'm satisfied the financial limits for a claim have been met here. However, Amex says there is no DCS agreement in place. Amex is the creditor here, as all payments for the car were made from Mr G's credit account. Mr G made payments to X himself, so he is the debtor. The only question is whether X has a relationship or contract with Mr G (or someone else, such as his wife or son).

Whilst Mr G's wife is on the order form and receipts, Mr G has explained this was only because it was his wife who initially went to test-drive the car. It was Mr G who made subsequent payments, including one in person at X's dealership. I think this is likely an administrative error on X's part that Mr G's wife was recorded on X's documents, as Mr G had previously explained she wasn't going to be the owner of the car. There isn't any evidence to show Mr G's wife had any involvement in the purchase of the car after taking it for a test-drive.

Mr G said his son was to be the registered owner of the car, but he wasn't a party to any agreement with X. Mr G has been consistent and credible in his testimony that it was him who had the relationship with X. It was Mr G who dealt with X directly, as evidenced by the emails he provided to Amex. It was Mr G who took delivery of the car. It was Mr G who handled negotiations over the repairs and spoke to X about the issue he's complained about. Mr G has explained the car was kept at his property and he was insured to drive it, so I'm satisfied the car was to be used by Mr G. There is nothing to show Mr G wasn't a party to the agreement with X.

Mr G paid for the car, and I'm satisfied he was a party to the agreement to purchase it. So, I think there was a valid DCS agreement in place between Mr G, X and Amex for the sale of the car. Because of this, I think Mr G was entitled to make a Section 75 claim.

I think it reasonable to conclude Mr G's Section 75 claim should have been accepted by Amex. Under Section 29 of the Consumer Rights Act 2015, a sales contract is to be treated as including a term that the goods sold (the car) remain at the trader's (X's) risk until they come into the physical possession of the consumer (Mr G). So, there was an implied term in the contract for the sale of the car that X was responsible for any damage that occurred before it was delivered to Mr G.

I think Mr G has provided persuasive testimony that the chip to the car's bonnet was not present at the time he purchased the car. Mr G immediately identified the damage and, before accepting delivery of the car, contacted X. Mr G recorded his discussion with X on the delivery note, which is contemporaneous evidence that the damage was new and that X agreed it would carry out a repair. There is no evidence to show the damage was pre-existing or present at the time Mr G purchased the car.

I think the evidence shows the chip occurred prior to the car being delivered to Mr G, so X was responsible for putting things right. There is no evidence to show X has carried out a repair to the car, as it was obliged to do. So, I think it is reasonable to conclude X is in breach of its contract to Mr G and his Section 75 claim should succeed. Mr G has obtained a quote of £768 for the repair and Amex has not raised any objection to the quote itself. So, I think it is fair and reasonable to require Amex to pay Mr G for the cost of the repair.

I've considered whether Amex should pay Mr G compensation for the distress and inconvenience its actions have caused. I can't compensate Mr G for the inconvenience caused by the chip, or by X's refusal to repair it. I note Mr G was frustrated with Amex's

complaints process, and that it said he must formally complain about its decision to decline his claim before his complaint could be referred to our service. Mr G also asked for additional compensation having seen Amex's response to our Investigator's recommendation that his complaint be upheld. However, I can't compensate Mr G for any upset caused by Amex's complaints handling or its response to our service – complaints handling in itself isn't a regulated activity. Similarly, our service doesn't have the power to fine or punish Amex for any complaint handling failings or tell it to change how it operates.

Having considered how Amex initially handled Mr G's Section 75 claim, I think it handled his claim unfairly for the reasons set out above. I accept that Amex's incorrect decision to decline his claim caused Mr G some disappointment and delay as well as the inconvenience of having to refer his complaint to our service. Having considered this impact carefully, I think £100 compensation reasonably reflects the distress and inconvenience caused by Amex's incorrect decision to decline Mr G's Section 75 claim.

Putting things right

Amex should:

- pay Mr G £768 so that he can arrange for the repair to be carried out.

Or

- pay Mr G £768 plus interest at 8% simple per annum from the time Mr G paid for the repair to be carried out until the date of settlement, subject to Mr G providing proof the repair has already been paid for.

And

- Pay Mr G £100 compensation for the distress and inconvenience caused.

My final decision

My final decision is that I require American Express Services Europe Limited should do what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 December 2025.

Victoria Blackwood

Ombudsman