

The complaint

Mr H complains about a claim he made to AMERICAN EXPRESS SERVICES EUROPE LIMITED (Amex) in respect of a faulty television.

What happened

In June 2023, £399 was paid using an Amex credit card to purchase a television. The purchase was made by Mr H's wife, using her supplementary credit card on Mr H's credit account and the purchase invoice was in her name. The purchase was made from a merchant who I'll call A and was manufactured by a company who I'll call S.

In November 2024, a black strip appeared down the screen. Mr H contacted A who said as the purchase was made more than 12 months prior, the item was outside its protection period, and it would not assist. Mr H's wife contacted S who said as the manufacturer warranty had expired, they would need to pay for any repairs required.

In January 2025, Mr H contacted Amex to raise a payment dispute under Section 75 of the Consumer Credit Act 1974 (Section 75). Mr H complained that the television was not of satisfactory quality and under the Consumer Rights Act 2015 it should have lasted a reasonable amount of time.

Amex reviewed the claim and declined it. It said the necessary debtor-creditor-supplier (DCS) relationship was not in place for a claim to be brought under Section 75. Unhappy with this outcome, Mr H raised a complaint, but Amex did not find it had treated Mr H unfairly regarding his claim.

Mr H brought his complaint to our service. He said Amex had interpreted the rules incorrectly and he should be able to raise a claim under Section 75. Mr H further said that under consumer duty, Amex has failed to act in good faith, caused foreseeable harm and is undermining his consumer rights.

Our investigator reviewed the complaint and agreed that the necessary DCS relationship was not in place for a claim to be raised under Section 75. Our investigator explained this is because the debtor in this case is Mr H but the contract is with Mr H's wife as she made the purchase and paid for it with her supplementary card on Mr H's account. Our investigator said he didn't think there had been any consumer duty failings and also considered whether a chargeback dispute could have been raised. On this, he said it would have been out of time. So overall, our investigator didn't find that Amex had done anything wrong when handling this claim.

Mr H asked for an Ombudsman to decide the complaint. He said he didn't feel a technicality of a purchase having been made using a supplementary card justified the voidance of his consumer rights. He further said this outcome was not in the spirit of the rules. Lastly, Mr H said he and his wife share all their accounts, finances and had shared use of the television. So, the complaint has now 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 would like to start by saying that I have provided a brief summary of the events that occurred above. I intend no discourtesy by this and can assure both parties that I have taken all the information provided into consideration when reaching a decision on this complaint.

In this decision, I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point, it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. Our rules allow me to do this, and this reflects the nature of our service as a free and informal alternative to the courts.

I also think it's worth clarifying that I'm deciding whether Amex acted fairly in assisting Mr H with his dispute against A. I'm not making a finding on the underlying dispute Mr H has with A. Amex did not supply the faulty television that Mr H is attempting to obtain a refund or replacement for, so when considering what's fair and reasonable, I'm only considering whether Amex acted in line with its obligations as a provider of financial services.

Section 75

Section 75 allows – in certain circumstances - for a creditor (Amex) to be jointly and severally liable for any claim by the debtor (Mr H) of breach of contract or misrepresentation made by a supplier of goods and/or services (A). Before the claim can be considered, there are some technical requirements which need to be met. Section 75 says:

“If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

Put simply, this means the person who owns the credit card account needs to have a claim for breach of contract or misrepresentation against the company which was paid using the credit card.

So, the first step is for us to establish who the “debtor” is. In this case, the debtor is Mr H as he holds the credit agreement with Amex. He is the sole person liable for any debt on the credit card account and therefore is the only one who can be described as a debtor, despite his wife holding a supplementary card.

The legislation above states that it is the debtor who is able to make a claim in respect of a breach of contract or misrepresentation made by the supplier of goods or services. In this case, the invoice is in the name of Mr H's wife and the payment was made on her supplementary card. As Mr H is the only one who is able to raise the claim, the addition of his wife into the equation breaks the DCS chain.

I have considered whether it was a joint purchase of some kind, which means we could potentially make an argument that Mr H's wife was a jointly contracting party. Mr H argues that this is the case. Although I understand that the television was put in their home and Mr H says it is used by both of them, joint contracting is usually a more effective argument when the item in question is fixed into the home. For an item that is moveable and could very well be owned by one person the argument is more difficult to make. And at best, this is a weak argument. I therefore cannot conclude that it would be fair and reasonable to say the contract was joint between Mr H and his wife and so the DCS chain remains intact.

Mr H has provided an example of caselaw which he says confirms that a creditor cannot escape liability under Section 75 merely by relying on technical arguments about how a transaction was conducted. A further example was provided which Mr H says makes clear that the courts will interpret consumer credit law in a manner that favours the consumer rather than allowing credit providers to exploit technical loopholes.

The first example provided by Mr H concerns a judgement regarding commission on a loan rather than Section 75, so I don't find it to be relevant here. I have reviewed the judgment issued down by the Supreme Court in the second example provided by Mr H. I find his summary of the judgment to be overly simplified and do not find this case has relevance to Mr H's complaint either. Mr H also provided a decision reference for this service to demonstrate that an Ombudsman at this Service had previously issued a decision in favour of the complainant in circumstances materially similar to his. To this I will only explain that we must consider the merits of each case on an individual basis, as I have done here.

I understand that Mr H and his wife thought they would be afforded the protection Section 75 offers and have been denied this on a technicality. I am not immune to how disappointing this must be. However, I find that it is only Mr H who has any potential claim for a breach of contract and as Mr H's wife is the contracting party, neither is able to successfully bring a claim to Amex. So, I find that Amex acted fairly in declining Mr H's claim.

Chargeback

Chargeback is a voluntary scheme under which settlement disputes are resolved between card issuers and merchants, under the relevant card scheme. A card issuer will review the claim against the possible reasons for a chargeback and look at whether it would be able to make a successful claim for the customer. Card issuers do not have to submit claims and usually will only do so, if it is likely to be successful. We don't expect them to raise a claim if there is little prospect of success.

In this particular case, I can see no evidence that Amex considered raising a chargeback. As a chargeback would need to have been raised within 120 days of the date of purchase or delivery, and the date the claim was raised was well outside that time limit, I find that even if Amex had considered raising such a claim, it wouldn't have been successful. So, I find it was reasonable for Amex to focus on Section 75 when reviewing Mr H's claim.

Consumer Duty

Mr H has raised some concerns about Amex having failed in their consumer duty. All of the arguments raised are in relation to the unfair decline of the claim causing the breaches. Consumer duty does not oblige a firm to meet a claim, and in light of the reasons I've set out above, I find that Amex hasn't acted unfairly or unreasonably in declining Mr H's claim.

My final decision

My final decision is that I do not uphold Mr H's complaint against AMERICAN EXPRESS SERVICES EUROPE LIMITED.

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

Vanisha Patel
Ombudsman