

The complaint

Mr M is unhappy with how AMERICAN EXPRESS SERVICES EUROPE LIMITED, trading as American Express ('Amex') handled his request to retrieve money he paid for goods bought using his credit card.

What happened

I issued my provisional decision to both parties explaining why I thought Mr M's complaint should not be upheld and invited both parties to provide any further evidence and / or submissions in reply.

The background to this complaint was set out in my provisional decision together with my provisional findings which are both copied below and now form part of this final decision.

Background

In early January 2025 Mr M bought some new luggage and luggage related items online. Mr M paid a total of £1,624.50 for five different items.

On 7 January 2025 the retailer e-mailed Mr M to confirm delivery, but Mr M replied to say he had not received the goods and asked the retailer to investigate what had happened. The retailer offered to replace the items, but Mr M expressed his concern about the courier used by the retailer and instead asked for a refund. The retailer said they could not consider a refund until their investigation was completed.

The retailer's investigation led them to conclude the goods had been delivered to Mr M based on the evidence provided to them by the courier. Mr M provided the retailer with further evidence to dispute their findings, but this did not change the retailer's position.

On 15 January 2025 Mr M approached Amex to raise a chargeback on his behalf. Amex raised a chargeback and placed a credit into Mr M's account for the sum in dispute; however, on receipt of the merchant's rebuttal and evidence decided not to pursue the chargeback any further and told Mr M the credit would be removed.

Our Investigator did not uphold Mr M's complaint. In summary, they said the chargeback had been fairly handled and given the available evidence showing the goods had been delivered it was unlikely a section 75 claim under the Consumer Credit Act 1974 would have been successful.

Mr M strongly disagreed with the Investigator. He said the retailer had ignored his instruction to only deliver the goods to him personally; the retailer had breached the Consumer Rights Act 2015 ('CRA') given their responsibility to ensure delivery; his signature had been forged on the courier's delivery records and the retailer was wrongly relying on this – his video evidence supported this; the retailer had not fulfilled their contractual obligations; Amex had not considered their liability under section 75.

Provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While I may not respond to each individual point raised and I've only included a summary of what's happened above, I assure both parties I've reviewed all their submissions and I have focused on what I consider to be relevant to reaching a fair and reasonable resolution in the circumstances of this case.

At the heart of this matter is Mr M's claim that he did not receive the goods in question and he is seeking to recover the cost of what he paid for them.

As Mr M bought the items in question using his Amex credit card this presented him with two possible avenues to potentially seek recovery of the costs in question – requesting a chargeback, and submitting a section 75 claim.

From my review it is apparent this matter has involved different parties so for the avoidance of doubt I make clear that my considerations are limited to Amex's actions only as the provider of financial services.

Chargeback

Chargeback is a mechanism by which the card issuer (in this case Amex) may be able to, in certain circumstances, recover funds on behalf of the cardholder (in this case Mr M) from a merchant's bank. Chargeback follows the strict rules of the card scheme provider (in this case Amex). There is no obligation on the card issuer to refund or assist in any way, although we would consider it good practice for them to do so where there is a reasonable prospect of success.

The card schemes are not within the jurisdiction of the Financial Ombudsman Service, so we are unable to require them to run their chargeback in a particular way; however, we are able to consider whether the card issuer has applied the rules correctly and fairly followed the chargeback process.

Given what Mr M initially shared with Amex about what happened, I think Amex fairly raised the chargeback on Mr M's behalf under the chargeback code 'goods / services not received or only partially received'.

The chargeback rules, specific to the reason code in question, set out that to reverse the chargeback the merchant could prove the goods were delivered to the address given by the consumer. The merchant's rebuttal to Amex included details of the goods and shipping address, and evidence of delivery from their courier to the correct address together with video footage supplied by the consumer from their property's video doorbell.

After receiving the merchant's rebuttal and evidence Amex decided not to take the chargeback any further and let Mr M know the charge for the goods was reasonable as the merchant had provided proof of delivery.

Mr M raised a complaint and shared that he had raised the matter with the police, including that the courier and falsified his signature on the delivery record; however, this was not enough for Amex to change their view of the chargeback.

The chargeback process does have further steps that would have been open to Amex to follow, but to decide whether to appeal further would be at Amex's discretion and whether they considered there to be a reasonable prospect of success should the dispute reach

arbitration stage – where the card scheme provider would make the final decision about the dispute.

In this matter Amex is not Mr M's advocate, they are simply working within the chargeback rules framework. And given the evidence provided at the time they were processing Mr M's chargeback, I am unable to say Amex acted unreasonably in choosing not to pursue the dispute any further, given it was not clear the matter would more likely than not have been upheld in Mr M's favour at arbitration.

It may help Mr M to know that Amex are confined to pursue a chargeback within the framework of the card scheme provider's rules. This means there is no requirement for Amex to investigate and get to the bottom of what has happened here in the way I think Mr M is looking for them to do. The card scheme rules describe what is expected of either party in respect of the particular dispute reason being raised.

Amex raised the chargeback for Mr M, considered the merchant's response and then Mr M's further submissions, but not unreasonably concluded to take the chargeback any further given it is fair to say the merchant was likely to have continued to defend the dispute. And given the complexity of the events it would be unlikely the card scheme provider would have been able to carry out the type of investigation perhaps best suited to these particular events given I am not aware of any authority the card scheme provider would have to call and cross-examine witnesses. I don't think it unreasonable to say that given Mr M has raised serious allegations of potential criminal behaviour, chargeback is perhaps not the forum best suited to this type of investigation.

In the circumstances I think Amex's handling of the chargeback was fair and reasonable given the evidence and submissions that had been made available to them.

Section 75 claim

Section 75 is a different mechanism by which consumers may be able to seek financial protection for purchases they have made using specified types of credit. Section 75 makes the provider of credit (in this case Amex) equally liable where there is a case of misrepresentation or breach of contract by the supplier of goods or services financed by the credit. However, there are certain criteria that must be met before considering whether there has been a misrepresentation or breach of contract.

From the submissions available, even though I note Mr M made references to the retailer breaching contract and the CRA to support his claim, there is no evidence that Amex considered a section 75 claim which is disappointing. In the circumstances, I have considered on balance what more likely than not would have happened if Amex had done so.

In such considerations it is not for me to determine the outcome of a claim – that would be for the provider of credit to decide; but, I can consider what fair and reasonable handling for such a claim may have looked like.

As mentioned above, there are certain conditions that need to be met in order for section 75 to apply, so this is what I have considered first.

Section 75 will only apply where a claim relates to any single item with a cash price exceeding £100 (and not more than £30,000). The cash price of a single item is relevant here – not the total Mr M paid on his card. In this case Mr M paid for five single items, each sold and priced separately. Two of the items in question – the luggage related accessories – were £67.50 each and therefore each priced at a value under £100. It therefore follows that

section 75 does not apply to these two items. The remaining three items fall within the cash price limits set out for a single item as they are: £535; £535; and £418.50 respectively.

I'm satisfied the three remaining items also meet the other conditions required under section 75.

Mr M alleges the retailer breached their contract with him by not delivering the items to him. Mr M says this because:

- Under section 29 of the CRA the items remained at the retailer's risk until they were handed to him. He asked the retailer for the items to be handed to him directly, and they did not do this.
- The courier did not hand the items directly to him and they falsified his signature - as supported by the doorbell video footage - and so he reported the courier to the police.
- The retailer wrongly relied on a fraudulent signature to show that the items were delivered to him.
- The courier had told him they would, in the circumstances, consider an insurance claim from the retailer, so this is what the retailer should do.

Neither party has provided any details of the contract relating to this purchase, so I have therefore considered the retailer's terms and conditions as set out on their website; the online terms and conditions of the courier, together with section 29 of the CRA given the CRA implies terms into the contract in relation to the passing of risk.

The retailer's online terms appear limited in relation to delivery conditions, but do explain that refunds are not automatically issued or replacements given for claims of non-receipt on tracked and confirmed deliveries. 'Confirmed deliveries' is not defined.

Section 29 of the CRA sets out what terms should be considered as included in a sales contract, including that the goods remain at the trader's risk until they come into the physical possession of the consumer or a person identified by the consumer to take possession of the goods.

And the courier's online conditions of carriage require the sender to acknowledge that the courier may deliver in accordance with additional instructions from the recipient, which could include (from a list given) that a recipient may say where to leave a package without obtaining a signature for delivery.

Taking everything into account I've not seen enough evidence to say Amex could reasonably have concluded there was a breach of contract they would be liable for. I say this because:

- It is not disputed that the goods were taken to the shipping address Mr M had given.
- While Mr M said the doorbell video footage he supplied did not have audio as he was not at home, so he says no conversation took place with the courier, the doorbell video footage does suggest the courier more likely than not spoke with someone at the shipping address. Following this the courier returned to their van, obtained a package and left it outside the door of the property. It would not be unreasonable to say it was likely the courier had been told to leave the goods by the door therefore passing on the responsibility of the goods to the recipient.

- Mr M was unable to provide any further doorbell video footage after the delivery to show what may have happened to the items.
- Mr M did email the retailer prior to delivery requesting the items be delivered to him directly and not placed elsewhere; however, the retailer quickly responded to let Mr M know he could contact the courier directly about the delivery arrangements. As noted above, the courier was able to take delivery instructions from the recipient. And there is no reason to believe Mr M did not receive the retailer's email stating to engage with the courier directly should he need to change delivery times or request a preferable pick-up point.

As I've said, it is disappointing Amex did not consider a section 75 claim. But all things considered I think a fair handling of the claim, given the available evidence (much of which was available to Amex through the chargeback process they had already decided not to take further) would likely have resulted in a declined section 75 claim.

I realise this will come as a disappointment to Mr M. As noted earlier Mr M has referred his concerns about the courier to the police. Given the limited evidence and the serious allegations of criminal behaviour Mr M has alleged about the courier, and that this service is not a court – so I do not have the power to compel and cross examine witnesses (and neither do Amex) – Mr M may wish to seek independent legal advice. I can only consider Amex's actions here as the provider of financial services and I've not seen enough here to persuade me, in the circumstances, that Amex have acted unreasonably.

Responses to my provisional decision

Mr M replied to disagree with my provisional decision for the reasons I've summarised here:

- Doorbell video footage – Mr M maintained he was not present at the property at the time of delivery and did not give any instruction to the courier; there is no audio for the footage; the courier left the parcel unattended; the signature was forged, and this was acknowledged by the courier.
- Breach of contract – Mr M said he gave explicit instructions to the retailer to only deliver the goods to him and this was a clear contractual term which was ignored and therefore breached by the retailer. Section 29 of the CRA states risk remains with the seller until the goods are delivered, so what happened here is not recognised as delivery under this legislation, and disproportionate weight has been given to the courier's standard terms.
- Amex's failure to consider Section 75 – Mr M said Amex's failure to consider Section 75 is grounds to uphold the complaint; an assumption was made about what the courier may have been told without acknowledging the forged signature, non-delivery or police crime report. This is a documented case of non-delivery with criminal elements supported by the police report and the courier's admission that the delivery record was inaccurate, and the video showing no goods were handed to anyone.
- Chargeback – Mr M said he understood the limitations of chargeback, but this doesn't affect his statutory rights under Section 75, and Amex's failure to not consider section 75 was not reasonable.

Amex confirmed receipt of the provisional decision, but did not provide any further evidence or submissions in reply.

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.

Mr M's recent submissions relate primarily to section 75, and in the absence of anything to persuade me otherwise, I therefore see no reason to depart from my provisional conclusions that Amex's handling of the chargeback was fair in the circumstances of this case.

Having given Mr M's further submissions careful consideration, there is also nothing new to persuade me to change the conclusions I reached in my provisional decision in relation to the section 75 considerations as I'll explain.

It is disappointing Amex did not consider a potential claim under section 75, but it does not then follow that a section 75 claim in this case should therefore be viewed as successful.

For the avoidance of doubt, there are several considerations that form part of a section 75 claim before being able to consider whether there has been a breach of contract or a misrepresentation.

As I explained in my provisional decision, two of the items did not meet the threshold for one of the section 75 considerations as the cash price for each item individually was less than £100, so it would have been reasonable for Amex to have declined claims for those two items. The remaining items met the thresholds for other section 75 considerations such as the type of credit used to buy the goods; however, I've not seen enough to say Amex would then more likely than not have recognised a breach of contract had likely taken place for those items.

While Mr M requested that the retailer deliver the goods directly to him (and so he says this formed a contract with the retailer), the retailer did not agree to this, rather they responded to tell Mr M he could contact the courier directly with any delivery requirements.

Whether something constitutes a legally binding contract would be for the court to decide, and I'm unable to say Mr M's email expressing a delivery preference to the retailer is enough to say the retailer should have done anything more than they did in reply.

I have again considered section 29 of the CRA which implies terms into the contract with the retailer that relate to the passing of risk for goods. But from the evidence available there is still not enough for me to say Amex would be unreasonable to have said they were not liable for a breach of contract, most notably due to the suggestion the doorbell footage appears to show the courier took some sort of instruction via the doorbell camera to leave the goods to the side of the front door – so passing the risk to the recipient.

I realise Mr M strongly disagrees with this, but as I explained in my provisional decision the type of investigation required to get to the bottom of what happened here requires a depth of investigation neither myself nor Amex could reasonably expect to carry out – I have no authority to call and cross-examine third-parties as witnesses, and I'm not aware that Amex has any authority to do this either. This would typically be something for a court to do.

I realise this matter is very important to Mr M given it is not a small amount of money but I remain of the view that given the seriousness of some of Mr M's allegations about the parties involved in this matter, it may be more appropriate for him to seek out independent legal advice. Based on the evidence available and within the scope of the powers I have, I've not seen enough to say, in the circumstances, Amex have acted unfairly.

My final decision

For the reasons above, my final decision is that Mr M's complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 October 2025.

Kristina Mathews
Ombudsman