

THE COMPLAINT

Miss R complains that American Express Service Europe Limited (“Amex”) will not reimburse her money she says she lost when she fell victim to a scam.

Miss R is represented by Refundee in this matter. However, where appropriate, I will refer to Miss R solely in this decision for ease of reading.

WHAT HAPPENED

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview.

Miss R says she has fallen victim to an investment scam involving the purchase of “*Art prints and NFTs*” (“the Artwork”). Miss R says the company she was purchasing the Artwork from, Smith & Partner (“S&P”), were not legitimate. She contends that S&P deceived her about the selling of the Artwork and its value. Miss R used her Amex credit cards to make a total of eight payments to S&P to purchase the Artwork. These payments amounted to circa £60,000.

Miss R raised the above with Amex. She argued, in short, that she was entitled to reimbursement under the chargeback scheme and section 75 of the Consumer Credit Act 1974, on the grounds of misrepresentation and breach of contract. Amex provided Miss R with a partial refund under the chargeback scheme (circa £40,000). Amex said that it was too late to dispute the remainder of Miss R’s payments under the scheme. Regarding section 75, Amex said there was not enough evidence to show misrepresentation or breach of contract. Unhappy with this, Miss R raised a complaint, which she later referred to our Service.

One of our investigators considered the complaint and did not uphold it. As Miss R did not accept the investigator’s findings, this matter has been passed to me to make a decision.

WHAT I HAVE 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.

Having done so, I find that the investigator at first instance was right to reach the conclusion they did. This is for reasons I set out in this decision.

I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

Further, under section 225 of the Financial Services and Markets Act 2000, I am required to resolve complaints quickly and with minimum formality.

Was S&C a scam company?

The issue around whether S&C was a scam company is complex. Therefore, I will not be making a determination on this point. In any event, I am satisfied that Miss R's complaint fails for other reasons.

Section 75 of the Consumer Credit Act 1974

(1) 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

...

(3) Subsection (1) does not apply to a claim—

a) under a non-commercial agreement,

b) so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000 ...

Terms and conditions

Below is a section from S&P's terms and conditions which Miss R signed, dated 29 June 2022:

5. Products

...

5.6. The decision to purchase the Products is your own.

- *5.6.1. We do not make any promise or guarantee that the products will be appropriate for your needs or desires*
- *5.6.2. **We offer no guarantee as to the value of the Products [my emphasis added]** and you should be aware that any Product may decrease in value at any time after they have been purchased from Us.*
- *5.6.3. **We do not make any guarantee that we will be able to sell the products for you in the future if you ask us to [my emphasis added]**. We do offer a resale service, but we will need to agree the terms of that specifically in the future if you wish to use this service and we agree to provide it.*

Has there been a misrepresentation and/or breach of contract?

Miss R argues that she has section 75 rights because S&P made false representations to her which induced her into entering a contract with S&P, where she suffered a loss as a result. Further or alternatively, Miss R argues that S&P breached the contract concerned. To assess Miss R's arguments, I have considered, amongst other things, the terms and conditions set out above. Other than Miss R's testimony, the terms and conditions are the most reliable documentary evidence available which sheds some light about potential representations made and contract terms.

Miss R asserts, in short, that the Artwork was not worth the amount S&P led her to believe; and that it was in fact worthless. I am not persuaded that there has been a misrepresentation or breach of contract in relation to this assertion. I say this because paragraph 5.6.2 of the terms and conditions state that S&P does not offer any guarantees as to the value of the Artwork. In fact, the terms go further than this and speaks to the Artwork potentially depreciating in value. Therefore, having considered the terms and conditions, I cannot conclude, on balance, that S&P made representations to Miss R which contradicted paragraph 5.6.2 in the way Miss R asserts. It follows that I am also not satisfied there was a breach of contract in relation to this point – indeed there is nothing in the terms and conditions which suggest S&P provided guarantees about the value of the Artwork.

Miss R also asserts, in short, that the Artwork was not sold as promised by S&P. I am not persuaded that there is a misrepresentation or breach of contract in relation to this assertion. I say this because paragraph 5.6.3 of the terms and conditions states that S&P does not make any guarantee that they will be able to sell the Artwork if asked – unless certain criteria is met, which I have not seen any evidence of. Therefore, having considered the terms and conditions, I cannot conclude, on balance, that S&P made representations to Miss R which contradict paragraph 5.6.3 in the way Miss R asserts. It follows that I am also not satisfied there was a breach of contract in relation to this point – indeed there is nothing in the terms and conditions which suggest S&C provided unqualified guarantees about selling the Artwork.

The High Court handed down a judgment on 4 October 2024. This judgment followed a hearing regarding an application by liquidators of S&P to continue a freezing order against, amongst others, the former director and shareholder of S&P. Refundee has made reference to this judgment to support its arguments about the issues above. However, I cannot take the judgment into consideration. Whilst the liquidators may have made submissions around the Artwork value and the resale service, the hearing and following judgment were only concerned with the continuation of a freezing order. Further or alternatively, the judge stated in his judgment that issues around the value of the Artwork and whether S&C were a scam company, were all matters for trial.

Whilst there might be other evidence to demonstrate the Artwork was worthless, this does not prove that there has been a misrepresentation or breach of contract in way in Miss R has argued, as the terms and conditions do not support this proposition.

Chargeback

Chargeback is an entirely voluntary scheme, which means firms are under no formal obligation to raise a chargeback claim. The relevant scheme operator can arbitrate on a dispute between a merchant and customer if it cannot be resolved between them. However, such an arbitration is subject to the rules of the relevant scheme – so there are limited grounds on which a chargeback can succeed, and a claim must be raised in time (120 to 540 days from the date of the transaction(s) in question).

Amex was able to recover some of Miss R's money by way of chargeback. I am satisfied that it is unlikely the outstanding payments – made in September and October 2021 – could be recovered under the chargeback scheme because they were disputed too late.

Should Amex have intervened in Miss R's payments?

Amex says that it spoke to Miss R about three of her payments, whereby she confirmed the payments were not fraudulent. Miss R has not challenged this point in response to the investigator's view. I have not seen anything to suggest that Miss R would not have responded in the same way had Amex intervened in any of Miss R's payments. At the time,

Miss R had no cause for concern about S&C.

Vulnerabilities

Refundee submit that Miss R was vulnerable at the time of the scam: *"I am autistic and so more susceptible to taking people at face value. This can be taken advantage of."*

I have not seen anything to suggest that Amex knew or ought to have known about Miss R's personal issues concerned. Therefore, I do not find that Amex should have dealt with Miss R's payments any differently in this regard.

Conclusion

Taking all the above points together, I do not find that Amex has done anything wrong in the circumstances of this complaint. Therefore, I will not be directing Amex to do anything further.

In my judgment, this is a fair and reasonable outcome in the circumstances of this complaint.

MY FINAL DECISION

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 26 October 2025.

Tony Massiah
Ombudsman