

The complaint

Mr S complains that American Express Services Europe Limited declined his claim made under section 75 of the Consumer Credit Act 1974 ("section 75") or under its chargeback scheme.

What happened

Mr S bought a coffee maker online from the manufacturer, which I'll call "D". He paid £760.00 using his Amex credit card. The advertisement for the machine said that Mr S could claim a free gift of a tasting pack, which appears to have included two coffee glasses and a selection of packs of coffee beans. It said:

*"Buy this Model Direct and add the Coffee Tasting Pack to your basket for **FREE worth up to £44.99**, T&Cs apply. Offer only while stocks last. Add both to basket – Discount applies automatically."*

The coffee maker was delivered to Mr S, but the free gift was not included. Mr S contacted D. In reply, D said that the tasting kit was out of stock, but it offered a different product in its place – a set of six coffee glasses. Mr S declined that offer. He said he could return the coffee maker or D could refund £44.99 from the transaction.

Because he could not reach an agreement with D, Mr S referred the matter to Amex. It considered whether Mr S had a valid claim under section 75. It concluded that he did not. In doing so, it noted that the offer applied only while there were stocks available. D had said that the tasting kit was out of stock, so it did not believe there had been a breach of contract on the part of D.

Mr S referred the matter to this service, where one of our investigators considered what had happened. She did not however recommend that the complaint be upheld, for broadly the same reasons as Amex had declined the section 75 claim.

Mr S did not accept the investigator's recommendation and asked that an ombudsman review the case. I did that and issued a provisional decision because, whilst I was minded to reach the same overall conclusion as the investigator, my reasons for doing so were different in some respects. In my provisional decision, I said:

One effect of section 75 is that, subject to certain conditions, an individual who uses a credit card to pay for goods or services and who has a claim for breach of contract or misrepresentation against the supplier of those goods or services has a like claim against the credit card provider. The necessary relationships are present in this case.

Section 75 does not apply where the price which a seller attaches to an item is £100 or less or is more than £30,000. I have considered whether that might apply in this case, but I do not believe that it does. The transaction which is in dispute here is the agreement for the purchase of the coffee maker. Mr S says either that D did not supply everything it should have done for his payment of £760 or that he was misled by the promise of a free gift into making the main purchase. In my view, therefore, the indication of the value of the gift does not bring the price exception into play.

I have therefore considered whether it was part of Mr S's agreement with D that he would receive a free gift. I am not persuaded that it was; the offer was expressly said to be available "... only while stocks last..." That is, there was no guarantee that Mr S would receive the free gift. I cannot of course know for certain whether the tasting kit was out of stock as D said it was, but I have no reason to think D was not telling the truth.

Section 75 can also apply where there is a misrepresentation. In broad terms, a misrepresentation in law is a statement of fact or law which is incorrect and which induces a party to a contract to enter into that contract. I have no doubt that the offer of a free gift was intended to be an inducement to customers to buy a coffee maker, or a particular type of coffee maker, or to buy it from D rather than elsewhere, or to buy it immediately. It was intended to influence customers' behaviour in some way.

I am not however persuaded that the statement that customers would receive a free gift was incorrect in this case. Again, that is because the full statement was, in effect, that the customer would receive the gift, as long as stocks were available. In addition, whilst the offer was a general incentive, I have not seen anything to indicate that, but for the offer of a gift which appears to be readily available for sale, Mr S would not have made the purchase. Further, if that offer had been of such importance to Mr S, I think he would have noticed that it was subject to availability.

I must reach my decision on the basis of what is, in my opinion, fair and reasonable in all the circumstances. And I think it is relevant here that D offered Mr S a different free gift. Its value appears to be in broadly the same range as the gift which was originally offered.

Finally, I have not commented in detail on the issue of chargeback. Amex accepts that it did not handle the chargeback request as well as it should have done, and it paid Mr S £25 in recognition of that. Given the nature of the underlying dispute, I do not believe that better handling of the chargeback would have led to a different result, so I take the view that the modest compensation payment was fair in the circumstances.

Mr S did not accept my provisional decision. In response, he said – amongst other things – that he had only bought the coffee machine direct from D because of the inducement of a free gift. But for that inducement, he would have bought it slightly more cheaply from a well-known department store. He explained too that the free gift which was advertised was in stock when he placed his order but that a shipping error on the part of the seller meant that it was no longer available when his order was completed. He said too that he tried to cancel the order but that was not possible because he could not be at home when D was willing to collect the machine.

The investigator put to Amex Mr S's point that he could have bought the coffee machine more cheaply elsewhere and that he only bought it from D because of the inducement of the free gift. Amex noted the position but said that it was not prepared to make an offer of settlement. I have therefore reviewed the case afresh.

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 stress that it is not for me to decide whether Mr S has a claim for breach of contract or misrepresentation against D, or whether he has a claim under section 75 against Amex. What I must do is decide what I consider to be a fair and reasonable resolution of Mr S's complaint, having regard, amongst other things, to any relevant law.

The information which Mr S has now provided about the availability of the coffee machine at a lower price is new evidence. It has also caused me to change my view about how his complaint should be resolved.

My provisional findings included the following paragraph:

Section 75 can also apply where there is a misrepresentation. In broad terms, a misrepresentation in law is a statement of fact or law which is incorrect and which induces a party to a contract to enter into that contract. I have no doubt that the offer of a free gift was intended to be an inducement to customers to buy a coffee maker, or a particular type of coffee maker, or to buy it from D rather than elsewhere, or to buy it immediately. It was intended to influence customers' behaviour in some way. The emphasis is added.

I very much doubt that Mr S chose to spend £760.00 on a coffee machine in order to receive a gift worth less than £50.00. Mr S says that both the department store and D were running Black Friday promotions (in the form of a discount and the free gift respectively), so I think it likely that this influenced the timing of the purchase generally.

I believe however that the main effect of the offer of the free gift was to persuade Mr S to buy the coffee maker direct from D, rather than in the department store. It made it worth his while to pay a little more. And that was not because of the value of the gift, but because it was something he wanted and could use. That was not necessarily true of the substitute he was offered. In the circumstances, I think Mr S should receive some compensation.

Mr S says he is entitled to cancel the contract for the purchase of the coffee maker. In my view, however, that would be disproportionate. More importantly, it would not be fair or reasonable. Some modest compensation will however put him in a position to buy the gift he was expecting, which it appears can still be bought separately. That will put him in broadly the position he expected to be in when he made his original purchase. I note too that he has already received £25.

My final decision

For these reasons, my final decision is that, to resolve Mr S's complaint in full, American Express Services Europe Limited should pay him £50.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 October 2025.

Mike Ingram

Ombudsman