

The complaint

Mr W has complained American Express Services Europe Limited (Amex) acted unfairly when declining his claim for money back.

What happened

The parties are familiar with the background details of this complaint – so, I'll only briefly summarise them here. It reflects my role of resolving disputes quickly with minimum formality.

In May 2024, Mr W bought a new petrol lawn mower for £194.65 from a retailer – who I'll refer to as H Ltd. He paid using his Amex credit card. As part of the sale, H Ltd provided a two-year warranty. H Ltd also offered access to customer support through a 7-day helpline.

Mr W has provided a video recording to show he's unable to start the petrol engine. Mr W says the mower stopped working after around 12 months. So, he contacted the support helpline. But they simply referred him to the online support. Mr W says he tried the suggested remedies but none of them worked. And when he emailed them for further help, they responded by suggesting he try things he'd already attempted.

Mr W was unable to take the mower back to H Ltd because they entered administration in November 2024 - which meant he was unable to make a claim against the warranty. Mr W says, "the new owner won't honour the warranty or provide customer service to help". This led to Mr W asking Amex to raise a claim under Section 75 of the Consumer Credit Act 1974 (Section 75) on the basis there had been a breach of contract and misrepresentation by H Ltd.

Amex declined the Section 75 claim saying the evidence didn't support there had been a breach of contract or any misrepresentation. However, Amex said they would reconsider the claim if Mr W provided them with an independent report, from a suitably qualified expert, that evidenced the reason the motor wasn't starting was due to a manufacturing defect. Amex offered to refund Mr W for the cost of the report if this then led to the claim being successful.

Mr W was unhappy with Amex's response so, he asked the Financial Ombudsman to consider the matter. Mr W says it's reasonable for Amex to provide the contact details of who they'd accept as a qualified expert. And it's disproportionate to pay around £100 to obtain a report - given the mower cost under £200. Mr W also said Amex hadn't addressed the failure of H Ltd to provide the promised customer service and warranty.

Our Investigator didn't uphold the complaint. They said that because the fault first occurred more than six months after purchase, under The Consumer Rights Act 2015 (CRA), it's for Mr W to provide evidence to show the mower was faulty and had an inherent manufacturing defect at point of delivery. And this requirement was mirrored by the terms of the warranty. Our Investigator didn't believe this had been proven, meaning Amex had acted fairly when declining the Section 75 claim.

Mr W didn't agree with our Investigator's findings. He maintains the promised service and

warranty hasn't been provided - which comprises of a breach of contract under Section 75. So, the complaint has come to me for a final decision.

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'm sorry to hear Mr W is unhappy with the mower he paid for. However, it's important to note my decision here is about the actions of Amex – and what they should fairly have done for Mr W in their position as the provider of the funds that facilitated the purchase of the goods.

In looking at how Amex handled the claim Mr W brought to them, I've considered the information reasonably available to Amex at the time, along with the relevant aspects of Section 75.

As the goods were purchased using a credit card there was the potential for Amex to have raised a chargeback as well as a Section 75 claim. Our Investigator explained why they didn't believe a chargeback would have succeeded. Mr W accepted this saying he hadn't asked Amex to raise a chargeback, and he hadn't raised this as a complaint issue. As such, I don't need to consider this further.

Section 75

In certain circumstances, Section 75 allows Mr W to hold Amex liable for a 'like claim' for breach of contract or misrepresentation in respect of an agreement with a supplier for goods or services which is funded by a credit card.

I'm satisfied the requirements for Mr W to make a like claim against Amex have been met on this complaint. So, I've gone on to consider if there is persuasive evidence of a breach of contract or misrepresentation which would reasonably have been available to Amex at the time it considered the claim.

Misrepresentation

I don't consider there was any misrepresentation. Even if H Ltd couldn't provide all the services it promised because they went out of business, it's not clear this would be a misrepresentation because I don't think H Ltd would have been aware they'd stop trading at point of sale.

Implied terms

The CRA is of particular relevance to this complaint. It says that under a contract to supply goods, there's an implied term that "the quality of the goods is satisfactory". In summary, this means the goods must meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months (beginning with the day on which the goods were delivered to the consumer) must be taken as to have not conformed to it on that day, unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

Mr W says he successfully used the mower as intended a few times. But it stopped working around a year after he bought it. Mr W says it's reasonable to expect a mower to work for more than 12 months. Indeed, I think it's fair to say many petrol lawn mowers continue to work for many years. But how long a mower lasts depends on a variety of factors, including, but not limited to, usage, age, environment and maintenance. In this instance, the video Mr W has provided clearly shows the petrol engine is failing to start. What we don't currently know is what is preventing this.

This left Amex with only knowing there appeared to be a fault. But it didn't know what that fault was. And it didn't have evidence the fault was present or developing at point of sale. So, I think Amex's answer of asking for an independent report was fair. I can understand why Mr W didn't think this was proportionate, but as a financial service provider (and not an expert on the goods), it's not unreasonable for Amex to want to see a bit more to show there'd been a breach of contract.

Based on the above, I don't find it unfair that Amex asked Mr W to provide evidence to show that:

- 1) there was a fault, and
- 2) it was inherent.

In any event, even if there was a breach, while Mr W requested a full refund, the CRA says in this scenario that a repair or replacement would likely be the first option. Without knowing what is preventing the motor from starting, it's not possible to say if it can be fixed. And if so, what this would cost. I think it's likely any competent repairer should be able to determine if the cost of repair is economically viable and identify if the issue was a result of a manufacturing defect that was likely present at point of delivery. I appreciate a repairer may charge for inspecting the mower and/or writing a report to confirm their findings. But Amex has offered to refund this cost if it determines there was an inherent fault. I think this is fair.

Express terms

Mr W says he didn't receive the promised customer support that was set out in the paperwork. I appreciate the helpline merely referred him to the support website. Mr W says this provided information about common causes of a motor failing to start and gave guidance on how the problem may be resolved. I accept Mr W may have preferred to speak to somebody, so they could discuss what he needed to do and how. But I'm not persuaded this would have led to a different outcome.

It looks like Mr W did get the sort of customer service support he was promised by H Ltd at point of sale. This appears to have been provided by a third-party firm who provides technical support on behalf of several retailers - not H Ltd. But I've not seen anything to suggest this wasn't how H Ltd had always arranged for this support to be delivered. And it's my understanding this support is still available. So, it's not clear there was a breach of contract in this regard or that Amex needed to offer a remedy.

Mr W also says there has been a contract breach because H Ltd has failed to comply with the terms of the provided warranty. It's not disputed that Mr W has been unable to take the mower back to a store operated by H Ltd - which is a warranty condition. This isn't possible because H Ltd has stopped trading. But I also need to consider what would have likely happened if this had been possible.

The terms of the warranty say: 'We will offer you a free repair of the item where this is possible or a replacement or a refund'. But the warranty also clarifies that: 'The warranty covers any manufacturing defect in materials, workmanship and finish'.

It's not for me to decide what H Ltd may or may not have done had Mr W been able to take the mower to a store.

It's possible the store may have simply replaced the mower or given a refund without them first attempting a repair or determining what had caused the problem. But equally, the store may have been able to fix the problem and got the motor started. Alternatively, although less likely, the store may have declined to help. In any event, the warranty is clear in that it only applies if the problem is a result of a manufacturing defect. As this hasn't been established, Amex was unable to say there had been a breach of contract under Section 75 in relation to the warranty. I think this was a fair conclusion for Amex to have reached based on the terms of the warranty.

I appreciate Mr W has strong feelings about what's happened. This is understandable given he believes that had H Ltd still been trading the issue with his mower would have been resolved in his favour. This may have been the case. But in the circumstances, I'm not persuaded there is enough evidence to support there has been a breach of contract or any misrepresentation with regards to the Section 75 claim Mr W has raised. So, I'm not going to direct Amex to take any action. If Mr W decides to obtain further evidence, and he's unhappy with how Amex treats him going forward, it might be something our service can consider for him.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 January 2026.

Carl Bibby
Ombudsman