

## **The complaint**

Mr A has complained about the way American Express Services Europe Limited (“Amex”) handled his request for money back in relation to goods bought with his credit card.

## **What happened**

Mr A ordered a handbag from a retailer (“the merchant”) costing £7,250 using his Amex credit card in January 2025. A few days after the handbag was delivered, Mr A contacted the merchant to arrange for the handbag to be returned for a refund. The merchant arranged for a courier service (“the courier”) to collect the package from Mr A. When the merchant received the returned package from the courier, the merchant claimed the handbag was not inside and refused to refund Mr A.

Unhappy with this, Mr A contacted Amex and it raised a chargeback. This was challenged by the merchant who stated that as the handbag had not been returned it was unable to process any refund. Amex then informed Mr A that the claim was unsuccessful.

Mr A complained to Amex about the outcome, explaining that the courier had inspected the package before it left his property, and that he had been given a receipt confirming the collection took place.

Amex didn’t uphold Mr A’s complaint and so it was brought to the Financial Ombudsman for consideration.

Our investigator issued an initial view, explaining there appeared to be sufficient evidence showing Mr A had followed the return process correctly, and so the complaint should be upheld.

Amex responded to this view, providing evidence it had received from the courier indicating that the courier’s driver had attended Mr A’s property to collect the package, but was told by Mr A that the package was not ready, and so the return label was left with Mr A. According to the courier, a package was then dropped off at one of the courier’s collection points a few days later with the barcode it had supplied to Mr A, and that an envelope was collected there, but not the goods.

Based on this new evidence our investigator issued a subsequent view not upholding the complaint. Mr A disagreed with the view, emphasising that he had not refused collection, and the package had been collected by the courier.

As Mr A disagreed with the investigator’s view, it has been passed to me for a 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've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I do not comment on any specific point raised by Mr A or Amex, it's not because I've failed to take it on board, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

It is important to note here that Amex is not the supplier of goods. Therefore, when I consider if it has acted fairly I am looking at its role as a provider of financial services only. In that regard, the chargeback scheme and Section 75 of the Consumer Credit Act 1974 ('Section 75') are particularly relevant here.

### Chargeback

Chargebacks are subject to the rules set out by the relevant card scheme whose logo appears on the card, which in this was case American Express. The card schemes are not within the jurisdiction of the Financial Ombudsman and we are unable to require them to run their chargeback schemes in a particular way. However, we can consider whether a card issuer has applied the rules correctly and conducted the chargeback process in a fair and reasonable manner.

A consumer cannot insist on their card company attempting a chargeback, but I would expect it to attempt one, as a matter of good practice, if there was a reasonable prospect of succeeding and to do so would be compliant with the rules of the card scheme. When Mr A first contacted Amex, it accepted there was a possibility of a successful chargeback being made and so it took the evidence Mr A provided and made one. I think this was a reasonable step for Amex to take. The merchant then didn't agree and pushed back, setting out why it believed the package had not actually been returned, including a photo showing an envelope had been returned, rather than a package containing the handbag.

Following the defence from the merchant, Amex then chose not to take the chargeback further, despite further evidence being provided by Mr A, in the form of a collection receipt. Although Amex could have taken the chargeback further, looking at the circumstances here I don't think it was acting unfairly by choosing not to do so. I say this because the chargeback rules for American Express cards, explain that a merchant providing evidence refuting a claim that the goods were returned to it, would be a valid defence in circumstances like this. As there was a lack of compelling evidence to show the merchant received the handbag back (giving Mr A the right to a refund) I don't think Amex were wrong not to take the chargeback further.

However, even if it could be argued that Amex should have pushed things further at this point, I don't think this would likely have made a difference here. As the merchant defended the chargeback, this would have then left the card scheme to arbitrate on the matter. I don't think this is a case where the card scheme is more likely than not to have upheld the claim in Mr A's favour. I say this because this is a complex dispute with the merchant and courier strongly contesting Mr A's account of what happened and vice versa.

Due to the nature of the dispute I think it is not clear as to how the card scheme would approach the matter and how it would be able to make a decision here (considering it would not be able to compel evidence or cross examine witnesses in a similar way to a court). But I think it would have been reasonable for Amex to want to be more certain about the goods being returned, in order to put a matter like this to arbitration. So, even if I considered that Amex should have pushed the chargeback to arbitration (which I don't), in any event, I don't think it should refund Mr A as if he had won the chargeback.

## Section 75

Under Section 75 Mr A can hold Amex liable for a 'like claim' that he would have against the supplier in court for breach of contract or misrepresentation.

There are certain requirements for a valid Section 75 claim to be in place, such as those relating to the cost of goods or the relationship of the parties to the agreement. In this case I am satisfied those requirements are met. From the submissions available, there is no evidence that Amex considered a Section 75 claim, which I think it would have been fair to do in this instance. 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. So I need to consider if there is persuasive evidence of a breach of contract by the merchant here.

Essentially, I consider this is a claim about alleged breach of the terms of the merchant's refund policy when goods are returned. I note that the merchant will issue a refund, if goods are returned within a certain time period, in their original box, and if possible in the delivery box – so a failure by the merchant to follow the refund policy would be a breach of contract which Amex are potentially liable for.

The issue here is not straightforward as it involves high value goods effectively going missing with strongly countered allegations on both sides. And underlying this, if Mr A is alleging the courier has stolen the goods, these are very serious allegations. In coming to my findings I have to keep in mind that I am unable to compel witnesses or investigate in the manner a court or other authorities might be able to. These are the same evidential challenges that Amex would have faced.

Mr A states that the package was handed to the courier at his house, and he obtained a collection receipt in respect of this. He also states the package he handed over to the courier contained the handbag in its original packaging, and was in the same brown postal box it had been delivered to him in, in line with the merchant's return policy.

In contrast, the merchant and courier state the package was not collected from Mr A's house. They've stated this was because Mr A stated the package was not ready, and instead the courier left a delivery label with Mr A, to allow him to drop off the package later on. The merchant said the package then entered the courier's delivery network a few days later, through Mr A dropping it off at one of the courier's separate collection points. When the package was eventually received by the merchant, it was stated to be an envelope, not the original packaging or the delivery box, and that the envelope did not contain the handbag from the original order, and instead contained just paper.

In respect of where the collection took place, although I fully take into account what Mr A has said in respect of the collection taking place at his home, there is tracking information from the courier disputing this version of events, stating that on the day of collection “*the receiver chose to keep the package*”, as well as testimony from the courier about the home collection not taking place. I’ve considered the customer receipt that Mr A was provided with, but having done so, I don’t feel this on its own is enough to say the collection took place at Mr A’s home. I say this because the customer receipt could have also reasonably been provided by the courier to Mr A in addition to the label that the courier has stated was given to Mr A, during the failed collection at his home.

There are several possibilities for what could have happened here, so it’s not possible to know for certain what happened. It’s possible that the courier attended Mr A’s house, quickly decided to steal the package, didn’t scan the package’s barcode to show it was received, recorded on their system stating that they didn’t collect the item, then left a replacement envelope in the drop off locker a few days later. But on balance, I think it was reasonable that Amex didn’t think that scenario was the most likely thing to have happened.

Rather than definitively deciding if the merchant received the handbag, my decision is about whether Amex acted fairly in not refunding Mr A based on the evidence it had available to it. And I don’t think it acted unfairly considering:

- the nature of the dispute, and the defence and serious allegations made by Mr A, the merchant and courier;
- the lack of compelling evidence to show the merchant received the handbag back; and
- its inability to compel witnesses or other evidence in a way a court might be able to.

In response to our investigator’s view, Mr A has pointed to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, which he feels places the risk of loss or mishandling of an item on to a merchant, when arranging for an item to be returned, as has happened here. I’ve considered this, but I don’t think it makes a difference here. I say this because the issue is not about whether the item was lost whilst in transit to the merchant, but rather whether the handbag was returned to the merchant.

Additionally Mr A has raised concerns about the evidence provided by the merchant and courier being contradictory and implausible. It is important to note that I am not saying definitely what happened here or indicating that Mr A did something wrong. There are of course several possibilities including third party interference with the package. However, fundamentally I don’t think Amex was presented with evidence that would have reasonably meant it should have concluded a breach had taken place and refunded Mr A in full here.

I know this will come as a disappointment to Mr A and I am sorry to hear about the stress this situation has caused him. However, my role here is limited to informal dispute resolution looking at Amex’s handling of the claim only.

It is worth underlining that neither Amex, nor this service has the investigative powers of other agencies. And my decision does not prevent Mr A from taking the merchant or Amex to court or reporting the matter to other authorities if he wishes to do so.

### **My final decision**

My final decision is I do not uphold this complaint.

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

Jonathan Wistow  
**Ombudsman**