

## complaint

Mr W complains that American Express Services Europe Limited didn't make a chargeback for a payment that he made using his credit card.

## background

Mr W used his American Express credit card to pay £195.06 towards crowd funding for a product development project with a potential delivery date in September 2015. He didn't receive the product so contacted American Express in July 2016. It said that the merchant wasn't required to provide it with information about the payment because of the length of time that had passed since the charge was incurred. And it said that it wasn't liable under section 75 of the Consumer Credit Act 1974 because the required debtor-creditor-supplier relationship wasn't present. Mr W wasn't satisfied with American Express' response so complained to this service.

The adjudicator didn't recommend that this complaint should be upheld. He considered that the product developer's terms and conditions were very clear that it didn't guarantee the projects and wasn't responsible if a project wasn't completed within expected timeframes, or at all. So he said that it was most likely that the product developer would defend any chargeback attempt made by American Express - and that the chargeback wouldn't be successful. As there wasn't a reasonable prospect of the chargeback claim succeeding, he concluded that American Express had acted reasonably in not carrying it out.

Mr W has asked for his complaint to be considered by an ombudsman. He says, in summary, that: American Express has previously refunded a payment to him in similar circumstances; it told him that if goods purchased on the internet were not delivered he would have the right to charge it back; and American Express has changed its policy.

## my findings

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

There's no right for a consumer to require that a chargeback claim be made. But if the right to make a chargeback claim exists under the applicable scheme rules – and if there's a reasonable prospect of success – I consider it to be good practice for a chargeback claim to be made. Mr W made a payment in May 2015 for a product development project with an expected delivery date in September 2015. He didn't contact American Express about a chargeback until July 2016 – more than a year after the payment had been made. At that time there would've been no reasonable prospect of a successful chargeback claim – so I consider that it was fair and reasonable for American Express to decline to make a chargeback claim. American Express says that Mr W should “... *bring any account queries to [its] attention upon receipt of [his] statement or as soon as [he] become[s] aware that the expected goods and services would not be provided.*” I consider that to be fair and reasonable.

American Express also said that a section 75 claim couldn't be successful because there was no direct relationship between American Express and the supplier. I consider that to be a correct application of section 75 – and I consider that American Express has no liability to Mr W under section 75 in these circumstances.

American Express may have refunded a previous payment to Mr W in similar circumstances – but I find that it isn't required to refund the £195.06 payment to him either under section 75 or as a result of a chargeback. And I'm not persuaded that American Express would've told Mr W that he could make a chargeback in these circumstances.

I consider that it was inherent in the nature of the crowd funding payment that Mr W made that he wouldn't necessarily receive a product. So I consider that it wouldn't be fair or reasonable to expect American Express to refund the payment to him if he didn't receive a product. I find that American Express hasn't acted incorrectly. And I find that it wouldn't be fair or reasonable for me to require it to refund the payment to Mr W or to take any other action in response to his complaint.

**my final decision**

For these reasons, my decision is that I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 5 December 2016.

Jarrold Hastings  
**ombudsman**