

## **complaint**

Mr J has complained that American Express Services Europe Limited ('Amex') debited his account when it shouldn't have.

## **background**

In January 2017, Mr J bought a second hand car. The car cost £15,100. He paid £10,403.90 of the purchase price in two transactions with his Amex credit card. The car came with a 12 months' warranty.

He was dissatisfied with the condition of the car. He thought it would come with a satnav but it didn't. He said the key kept 'sticking'. After a long journey, the break and reverse lights started to loosen and the plastic cover in the boot fell off.

He took the car back to the dealership in February. It fitted a satnav for free. It supplied a new recoded key, investigated the rattling noises and tightened some loose tools – all under the warranty. It also provided him with a full tank of diesel.

Mr J still wasn't happy. He wanted to reject the car. He asked the dealership how much it would pay to buy it back. It said it would buy back the car for £11,700.

At this point, Mr J believed he'd been misled on the price and description of the car. He complained to Amex in April 2017. It raised a chargeback and credited his account with £10,403.90. The dealership successfully defended the chargeback.

Mr J then complained under section 75 of the Consumer Credit Act 1974. Amex considered his claim but rejected it. It concluded there hadn't been a misrepresentation of the price or description of the car. It also said the dealership had resolved his complaints under the warranty and at no extra cost to him.

In November 2017, Amex debited his account with £10,403.90. He complained about the debit. He said Amex told him the credit was permanent and it wasn't entitled to debit his account without his consent. He was also unhappy at the delay in re-debiting his account. He said it didn't provide an explanation at the time and the re-debit has affected his credit rating and caused distress to him and his family.

He asked Amex to re-credit his account.

Amex said it listened to the call with its customer care professional. It said she told him that if Amex hadn't heard from the dealership, then he would get a permanent credit. It said even though she said this, she wasn't in a position to predict the outcome of his dispute. It went on to say that it had sent him two letters in May, which explained that it might reverse the credits if the merchant didn't send it the information it requested. But it apologised if it misled him and applied 5000 Avios points to his account

Unfortunately, its reply also described the credits as 'permanent.' It later apologised for this error and for the five months' delay in re-debiting his account. It offered him £100.

However, Amex refused to re-credit his account.

Mr J didn't think this was fair so he brought his complaint to this service.

Our investigator agreed that Amex said the credit was permanent when they spoke on the phone but it later qualified this statement by saying that the *"the merchant can come back to them at any point with the documentation that we will have to review"* He said he should have been aware that it could re-debit the account.

He also said the dealership had resolved the problems with the car and he'd kept the car. So he didn't think it was fair for him to keep the car and the credit.

He thought Amex should have re-debited his account sooner but he said its offer of £100 and 5000 Avios points was a fair and reasonable settlement of his complaint.

Mr J disagreed with our investigator's opinion. He maintains that Amex shouldn't have debited his account without his consent; that it took a long time before deciding to take this action and he finds the settlement offer unacceptable.

He's asked for an ombudsman's final decision.

### **my findings**

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

This complaint is not about how Amex handled Mr J's claim under s75 of the Consumer Credit Act 1974 or his chargeback claim. It's only about whether it was entitled to re-debit his account. So I won't be looking at his complaints about the condition of the car or its sale price. Besides, I understand that Mr J has now sold the car, making it impractical for me to look at these issues.

Mr J's complaint is that Amex told him the credit was permanent but reversed it anyway, without his authorisation. He said it had no right to do this.

He relies on the telephone conversation he had with a customer care professional on 6 May 2017. He called Amex to complain about the problems he'd been having with the car. It decided to raise a chargeback with the merchant. He said the customer care professional told him that Amex would credit his account with the £10,403.90 and this would be a permanent credit.

Amex followed up this call with a letter dated 12 May 2017. This letter says:

'We have applied a £1,000 credit to your account which will replace the amount previously under review....Please keep in mind that if the merchant does send us documentation to support the charge at a later date, we may reverse the credit applied on your account.'

It sent a similarly worded letter on 19 May 2017 for the credit of £9,403.90 – the rest of the money.

Amex wrote again on 8 June. It said the merchant had provided it with documents to defend the chargeback. It advised him that the amount previously credited had been 'reapplied' to his account balance.' The letter said he would see this on an 'upcoming billing statement.'

Amex hasn't sent this service a recording of the phone call. But I think that call was superseded by the letters Amex sent him anyway. The letters of 12 and 19 May 2018 make it clear that Amex might reverse the credits if it was satisfied with the information supplied by the merchant. I consider that Mr J would have been aware of the possibility that Amex might re-debit his account.

But even if he were misled by the call, I still have to consider what is fair and reasonable in the circumstances of this case.

When Amex credited his account, it was effectively refunding the purchase price after he'd complained about a faulty car. I understand that the dealership resolved the problems with the car. Fundamental to this complaint is the fact that the money he wants back was most of the purchase price for the car, which he kept. Mr J authorised the debit when he first paid for the car with his credit card. He always expected his account to be debited with this sum and he was always going to have this debt on his credit card account.

In these circumstances, I don't think it's fair and reasonable that he should not pay for the car that he kept and subsequently sold.

Mr J has also complained about the delay in re-debiting his account. He also said it didn't explain what it had done or give him notice.

But it did warn him in June that it would be doing this. Amex then decided to refer his complaint about the car to its s.75 team. It's possible that Amex decided to wait for the outcome of the s.75 claim before re-debiting the account. The s.75 claim wasn't resolved until August. Even so, there was still a delay three months.

The re-debit was applied in November. I appreciate this left him with an unexpectedly large balance just before Christmas, which is a costly period for most consumers. But this wasn't a new debt. As I've said, he was always going to have this debt on his credit card account. And he hasn't suffered any additional loss. He has also said in response to our investigator's assessment that he isn't in financial difficulty.

For these reasons, I think Amex's offer of 5000 Avios points and £100 was a fair and reasonable one in the circumstances.

I'm sorry this will be disappointing news for Mr J but I hope the reasons for my decision are clear.

### **my final decision**

My final decision is that I won't be upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 January 2019.

Razia Karim  
**ombudsman**