

## **complaint**

Mr C complains that American Express Services Europe Limited won't refund to him the money that he paid for a mobile phone. His complaint is made against American Express under section 75 of the Consumer Credit Act 1974.

## **background**

Mr C used his American Express credit card in October 2015 to pay £349.99 for a mobile phone for his wife. He says that his wife didn't like the phone so he's been using it. And he says that there have been multiple faults with the phone over the years and it's been sent to the manufacturer each time for repair. He made a claim to American Express under section 75 in September 2017 and said that he wanted a refund because of the faults with the phone. And he provided an independent report which said that the phone randomly reboots and that it has an echo when receiving calls. American Express said that Mr C bought the phone for his wife so the debtor-creditor-supplier relationship required for a successful claim under section 75 wasn't present. Mr C wasn't satisfied with its response so complained to this service.

The case handler recommended that this complaint should be upheld in part. She didn't agree with American Express' decision as she believed that there was a debtor-creditor-supplier chain. So she said that that American Express should've looked into Mr C's claim and, because it didn't, she recommended that it should compensate him £50 for the trouble and upset caused. But she didn't believe that there was sufficient evidence to show that the supplier had breached its contract with Mr C or misrepresented the quality of the phone. She said that the independent report was dated November 2017 and the phone was purchased in October 2015 - so the damage to the handset could've been caused any time after the sale.

American Express has accepted the case handler's recommendation and has agreed to pay £50 compensation to Mr C. But Mr C has asked for his complaint to be considered by an ombudsman. He says, in summary, that there is clear evidence that there was a manufacturing fault with the phone and he refers to an overseas class action lawsuit in which the manufacturer offered a cash settlement to all claimants and to internet articles about faults with the phone. And he doesn't agree that £50 is an accurate reflection of what he should be compensated.

## **my findings**

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

In certain circumstances, section 75 gives a consumer an equal right to claim against the supplier of goods or services or the provider of credit if there's been a breach of contract or misrepresentation by the supplier. One of those circumstances is that there must be a direct relationship between the debtor, the creditor and the supplier. And if there is such a relationship, I must be satisfied that there's been a breach of contract or misrepresentation by the supplier of the phone to be able to uphold Mr C's section 75 complaint about American Express.

Although Mr C initially bought the phone for his wife, he says that she didn't like it and that he's used it. And I consider that the debtor-creditor-supplier relationship required for a

successful claim under section 75 was present in these circumstances. So I consider that American Express should've investigated the merits of Mr C's claim. Its failure to do so has caused distress and inconvenience to Mr C. And I consider that it would be fair and reasonable for American Express to pay him £50 to compensate him for that distress and inconvenience. American Express has agreed to do so.

Mr C bought the phone in October 2015 and he says that it had multiple faults which have been repaired by the manufacturer. He then claimed a refund of the money that he'd paid for the phone from American Express under section 75 in September 2017. The phone was inspected by an independent expert in November 2017. The expert's report says that the phone randomly reboots and has an echo when receiving calls. But that report was written more than two years after Mr C had bought the phone. And previous faults had been repaired by the manufacturer. Had those faults continued I consider that it would've been reasonable to expect that Mr C would've complained to the manufacturer or would've claimed from American Express under section 75 earlier than he did.

Mr C refers to an overseas class action lawsuit and to internet articles about faults with the phone. But I'm not persuaded that that is enough to show that the phone was faulty when it was bought by Mr C or that the repairs by the manufacturer weren't a suitable remedy for the faults about which he had complained.

Having considered all of the evidence, I'm not persuaded that there's been a breach of contract or misrepresentation by the supplier. So I find that it wouldn't be fair or reasonable in these circumstances for me to require American Express to refund to Mr C under section 75 the money that he paid for the phone.

### **my final decision**

For these reasons, my decision is that I uphold Mr C's complaint in part. And I order American Express Services Europe Limited to pay £50 to Mr C to compensate him for the distress and inconvenience that he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 June 2018.

Jarrold Hastings  
**ombudsman**