

complaint

Ms C complains that American Express Services Europe Limited (American Express) won't refund the cost of a television she purchased on a credit card.

background

Ms C purchased a television through an online marketplace and paid using a credit card. Around 18 months later the television developed an overheating fault. Ms C made a claim to American Express for breach of contract pursuant to section 75 of the Consumer Credit Act 1974 (section 75).

American Express didn't think they were responsible under section 75 as there wasn't the necessary direct relationship between them and the supplier of the television.

Unhappy with this, Ms C referred her complaint to our service. Our investigator didn't think it should be upheld. In summary, he explained that for Ms C to make a valid claim under section 75, she needed to have paid the seller directly. But she hadn't. He could see she'd made the payment to an online market place who'd acted as an intermediary by passing the money to the seller. This meant there wasn't the necessary direct relationship between American Express and the seller.

Ms C disagreed with the investigator. In view of the continued disagreement, the matter has been passed to me for a 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. Having done so, I've decided not to uphold Ms C's complaint. I'll explain why.

Section 75 gives consumers an equal right to claim against the provider of the credit if there's either a breach of contract, or misrepresentation on the supplier's part. Generally speaking, in order to make a successful claim under section 75 for breach of contract, there's a requirement for an unbroken relationship between:

- The buyer (known as the debtor – in this case, Ms C).
- The bank (known as the credit provider – in this case, American Express through Ms C using her credit card).
- The seller (known as the supplier – in this case, the business that supplied Ms C with her television).

Ms C made her payment to the online marketplace, who then paid the seller. As Ms C didn't make her payment to the seller directly, there's no unbroken debtor-creditor-supplier relationship. So Ms C can't claim a refund from American Express under section 75.

I realise my decision isn't what Ms C wants to hear. But for the reasons I've explained, I don't think American Express have acted unfairly by refusing to refund the cost of the television.

my final decision

For the reasons I have given, it's my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 2 October 2017.

Michelle Griffiths
ombudsman