

complaint

Mr H complains that American Express Services Europe Limited (Amex) rejected his claim under Section 75 Consumer Credit Act 1974 in respect of a mobile phone.

background

In December 2015 Mr H bought a phone made by a company I will call X, using his Amex credit card. In November 2017 after being charged the phone died. He took it to one of X's outlets and it confirmed the phone was faulty and wouldn't power on. He took the phone to the retailer from whom he had bought it and asked that it be repaired. It refused and explained that it needed a report from an engineer accredited by X confirming it was an inherent fault.

As X refused to provide this he made a claim under Section 75. This too was rejected by Amex. It said that the retailer required written evidence from the manufacturer that there was an inherent fault. The report from X didn't confirm there was an inherent fault. It went on to say that without the benefit of an independent report it couldn't uphold his claim.

Mr H brought his complaint to this service where it was considered by one of our investigators who recommended it be upheld. Mr H had submitted information which showed his particular model of phone was subject to battery failure. X had identified model numbers which it accepted were faulty, but it also said that phones outside this range could be affected. He also said that the delay in the failure didn't mean that the fault wasn't inherent. He explained that the faults arose once a battery degraded and so would only come to light much later.

The investigator said it was clear there was a fault and noted that Mr H queried how he could fulfil what both Amex and the retailer had asked as the vast majority of 'X *accredited engineers*' work at X stores. He tried to get a statement from them and they had refused.

He accepted that a manufacturer's statement on whether something is an inherent fault or not can be a key factor in cases similar to this – here Amex themselves seemed to cast doubt on whether or not they would accept X's statement even if Mr H *did* get it.

He believed Mr H asked X and he thought it unfair to say the absence of a report meant that his suspicions of there being an inherent fault were automatically wrong. Given the failure of his phone and how this very closely mirrored well publicised issues with the same product from the same time he felt it was likely his phone had an inherent fault. He suggested Amex pay Mr H for the cost of repairing the phone, (£249.17+VAT) and £100 in compensation for not accepting the Section 75 claim when it was made.

Amex didn't agree and said the expected life of a mobile phone was two years. It also said that the manufacturer's information on faulty phones confirmed the phone wasn't affected. It also said that if Mr H provided an independent report it would reconsider his claim.

my findings

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

Because Mr H's transaction with N was financed by credit supplied to him by Amex, Section 75 of the CCA1974 is a factor that needs to be taken into account when dealing with his complaint. In simple terms, section 75 gives Mr H an equal right to claim against Amex or the retailer for a breach of contract or misrepresentation by the retailer.

It is accepted that Mr H meets the requirements of a Section 75 claim and the only matter for me to consider is if the phone wasn't fit for purpose when it was bought. Amex has suggested that given the time it took for the fault to materialise it is unlikely it was inherent at the point of purchase. It has also taken the view that it needs an independent report to allow it to uphold any claim and it believes the wider publicity around problems with the phone isn't sufficient.

It is beyond doubt the phone has died – this has been confirmed by X. What is less clear is what has caused this. Amex has suggested such phones only last about two years. This is contradicted by X which claims its phones last for at least three years. Therefore, I don't think that suggestion is sufficient to reject the claim. I think it perfectly reasonable for a consumer to expect his phone to last for at least three years. The phone's performance may suffer and it may be out of date with the latest technology, but it is reasonable to expect it to be operating for more than two years.

There has been significant publicity about the battery performance of phones manufactured by X and in due course it had to accept that some batteries were faulty. It also accepts that some phones which fall outside those it had identified may also be affected by the same problem. The phones it accepts were defective were manufactured in the autumn of 2015. Mr H bought his in December 2015. It is quite possible his is one of the affected ones even if X hasn't included it on the list. The way it stopped working fits with the type of issues the phones X accepts are faulty behaved.

The other matter is the need for an independent report. I agree with Amex that such a report can make life easier when considering a claim, but the lack of one doesn't necessarily mean it should fail. The retailer asked for a report from an engineer accredited by X. Amex asked for an independent one, but I can see why Mr H read the letter as suggesting it too wanted one by an X accredited engineer. I too initially read it as requesting a report from an engineer accredited by X.

Given X had refused to supply such a report that placed Mr H in a difficult position. Asking for such a report is in effect asking X to mark its own homework. Mr H had a phone which had stopped working and circumstantial evidence which pointed to it being an inherent fault. X had refused to help and so he turned to Amex. While I can see why it took the stance it did I don't think it considered the claim in the round. Its response seems to have been no report, no claim. I believe that in the circumstances Mr H had supplied sufficient information to allow the claim to be upheld.

my final decision

My final decision is that I uphold this complaint and I American Express Services Europe Limited to compensate Mr H as set out by the investigator. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 December 2018.

Ivor Graham
ombudsman