

complaint

Mr H has complained American Express Services Europe Limited won't refund the cost of a drone he bought which was faulty. He made a claim to American Express under section 75 of the Consumer Credit Act 1974.

background

In December 2016 Mr H bought a drone. It cost £1,359 which he paid for using his Amex card. He had problems within a month or so as the drone kept losing connection. He returned it for repair. It was sent back to him in February 2017. He then had further problems. It continued to lose connection mid-flight, and the focussing on the camera wasn't working properly. As he couldn't get the supplier to refund him, Mr H made a claim against Amex.

Amex told him they didn't believe his claim met the criteria under section 75. Mr H brought his complaint to the ombudsman service.

Our investigator considered the evidence. Amex disputed Mr H's claim. They said there was no debtor-creditor-supplier-link as required by section 75. But our investigator didn't agree. She couldn't see there'd been any break in the chain. Whilst another party (who I'll call W) processed the payment, they didn't hold funds and the money for the transaction was paid to the supplier. She went on to say she felt all the evidence showed the drone hadn't been of satisfactory quality. She asked Amex to refund the money Mr H paid, along with 8% simple interest on that amount.

Amex didn't agree with this outcome. In September 2017 they said they'd be providing further comments from their internal legal counsel. They also pointed out another complaint where they felt we'd reached a different decision. This complaint has now been referred to an ombudsman.

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 reached the same conclusion as our investigator.

Section 75 of the Consumer Credit Act 1974 allows a customer to claim a refund of money for goods or services they paid to a supplier when entering into an associated credit agreement, like Mr H's credit agreement with Amex. But specific conditions apply to those claims. There needs to be a clear link between Mr H, the company he paid the money to and Amex. And then it's for Amex to consider whether there was a breach of contract or misrepresentation by the company that led to Mr H making this purchase.

It's worth clarifying I'm not deciding Amex's liability under section 75 of the Consumer Credit Act. We certainly take into account the relevant law and that includes section 75. But we decide cases by considering what is fair and reasonable, as statute requires us to do. What I'm deciding is whether Amex did enough in considering Mr H's complaint. And if they didn't, what else should they now do.

If there was a misrepresentation or breach of contract in the supply of the goods then it's fair to ask Amex to put things right.

is there a valid debtor-creditor-supplier agreement?

A debtor-creditor-supplier agreement means the arrangements that need to be in place between the different parties for someone to be able to pursue a section 75 claim. The formal wording is provided in section 12 of the Consumer Credit Act 1974. I've reviewed this in considering this aspect.

Because of the way card payments operate, there's usually other parties involved in processing the card payment who aren't the creditor and aren't party to the underlying contract for goods or services. Their activities won't generally interfere with the debtor-creditor-supplier agreement. For example:

- The supplier will usually be signed up with a merchant acquirer who'll deal with payment processing. There are a number of companies providing merchant acquiring services. W undertakes this role for some suppliers. Their involvement creates a four-party agreement, and the courts have said this doesn't affect the debtor-creditor-supplier chain.
- There'll probably also be someone providing facilities to allow the supplier to take card payments. That might be through a payment terminal, or if online, what's known as a payment gateway. One of the companies that do this includes W as well as others. They provide the technology to ensure the transaction is processed efficiently. They don't possess the money – although they will get paid for their services by the supplier. This processing may add to the number of parties involved – by now maybe five or even six – but there's no evidence it affects the debtor-creditor-supplier chain.

In Mr H's case, Amex believes W has acted either as a merchant acquirer or a card gateway. I think they've acted in one capacity or the other too. If it's the first case, then the courts have said a four-party agreement does not break the chain. And if W acted as a card gateway then I can do no better than quote from their own information:

"The gateway doesn't handle money on its own behalf, it merely acts as the agent of the recipient [the supplier] and therefore the card payment is deemed to have gone directly to the recipient"

I've seen no evidence that W's involvement disrupts the d-c-s chain in any way. Amex has now had about a year to provide us with their detailed thoughts but nothing has been shared with us. I'm satisfied there's a valid d-c-s agreement in place in Mr H's case. This means he can submit a *"like claim against the creditor"* (Amex in his case) for a breach of contract.

was there a breach of contract in the supply of goods?

I don't think there's any dispute about the facts of Mr H's case. Mr H bought a drone. It broke down. It was returned for repair within a couple of months. This didn't resolve the problems. It's clear Mr H's drone continued to have issues. This included losing connection mid-flight. And taking indistinct photographs on one side. He's also had problems with the car charger. I've seen his video evidence of this. All of this evidence has also been shared with Amex.

As Mr H's drone went for repairs once, I don't think it would be fair for repairs to be attempted again. It's fair to expect goods to be free of faults and in a satisfactory condition

when bought and to last a reasonable period. I don't believe this is what happened here. In the circumstances, I think it's fair and reasonable to get Amex to put things right.

To do this, they need to refund the money Mr H paid for his drone. This was £1,359. That needs to be refunded in full. And his Amex account needs to be reworked. Any interest and charges levied because of the cost of this item need to be removed and refunded to his Amex account. Obviously Amex has a right to the drone since they're paying Mr H the money for this. I leave it to them to decide whether they wish to take ownership of it. But this will need to be at their own cost.

I can't be sure when Mr H paid off the £1,359 in full from his account. He may have paid his January bill, with the drone costs on it, in full when due on 13 February 2017. But he may not. In any case Mr H will have paid it off fully at some stage. And from that stage until the date of settlement, Amex needs to add 8% simple interest a year to the amount and also pay that to Mr H.

Amex highlighted another decision where they felt we'd come to a different conclusion. I reviewed that case but felt it was considerably different to this one. Particularly when I considered the role played by W. And Amex will also be aware we consider cases on an individual basis.

I know Mr H has been waiting an extremely long time for his complaint to be considered by an ombudsman. I'm sorry for this delay.

my final decision

For the reasons I've given, my final decision is to instruct American Express Services Europe Limited to do the following to put things right:

- Repay Mr H £1,359 for the cost of a faulty drone;
- Rework his Amex account to make sure he's not charged any interest or charges relating to this amount;
- Add 8% simple interest a year to this amount and pay this to Mr H for the period when he paid this amount to Amex until the date of settlement; and
- Let Mr H know what arrangements they want to make to pick up the drone, if they wish to do this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 October 2018.

Sandra Quinn
ombudsman