

The complaint

Mr S complains that American Express Services Europe Limited failed to consider his claim under Section 75 of the Consumer Credit Act 1974 ("section 75") and this has caused him a financial loss.

What happened

In 2022, Mr S purchased an item from a merchant, who I'll refer to as "T" using his American Express credit card. He paid £3,749. Mr S contacted American Express to ask it to help him get his money back because he was dissatisfied with the goods he purchased.

American Express obtained a full refund from T for Mr S using the chargeback scheme it operated. However, T then commenced legal proceedings against Mr S for the money it had refunded to Mr S. Mr S and T entered into a mediation settlement agreement without having to go to a Court hearing. Mr S agreed to pay T £1,000 to settle the dispute over the goods that had been purchased.

Mr S then complained to American Express and asked it to refund him the £1,000. He said that American Express should have considered his original request for a refund under section 75, not a chargeback. If it had done this, he says that T would have been unable to take him to Court.

American Express didn't uphold his complaint. It said that the purchase didn't meet the requirements for a successful section 75 claim, and he had in any event already received a refund through the chargeback scheme so he couldn't receive a refund twice.

I sent Mr S and American Express my provisional decision on 16 January 2024. I explained why I didn't think the complaint should be upheld. I said:

I'm not persuaded that American Express' failure to consider Mr S' request for a refund under section 75 has caused him a loss of £1,000 – or any financial loss.

When Mr S did ask American Express to consider his request for a refund under section 75, American Express responded to say that his transaction didn't meet the necessary requirements for a successful claim. It seems likely this is the response American Express would have always given had it considered section 75 before chargeback. This means Mr S would still be in the same position.

I've also considered that American Express' stance on section 75 might not have been correct. It seems possible the transaction did meet the necessary requirements for a claim to be made. But even if American Express had found that to be the case and proceeded with that claim prior to initiating a chargeback, I'm not persuaded that Mr S would have received all of his money back anyway.

I'm not privy to the specifics of what was discussed and agreed as part of the mediation settlement agreement between Mr S and T. But it's clear that Mr S agreed to pay T £1,000 to resolve the dispute. I also understand that Mr S is unable to return

the goods and has kept them.

As part of considering what, if any, redress was due under a section 75 claim and complaint, I would have expected American Express to take into consideration what had happened to the goods. As Mr S has kept the goods and had some benefit of them, it seems likely and plausible that if American Express had considered a section 75 claim further, that some kind of deduction for usage and benefit would have formed part of any proposed redress.

It's not possible to say exactly what deduction American Express might have made, but I'm satisfied it would more likely than not have included some deduction (assuming of course it would have agreed it was jointly responsible under section 75 for a breach of contract or misrepresentation). Had it made a deduction of £1,000, I don't think that would have been unreasonable, considering the value of the goods and that Mr S has kept them and had some benefit of them.

Taking everything into account, I'm not persuaded that Mr S is in any materially different position now financially than what he would have been if American Express had: a) considered his claim under section 75 initially and, b) agreed it was jointly responsible for a breach of contract or misrepresentation. I therefore don't think it needs to do anything further to put things right.

Neither Mr S nor American Express responded to my provisional decision.

What I've decided – and why

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

As neither party responded to my provisional decision, I've seen no reason to reach any different conclusion. I'm therefore satisfied that American Express' handling of Mr S' section 75 claim and complaint didn't cause him any material financial loss. For that reason, I don't think it needs to do anything to put things right.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 March 2024.

Tero Hiltunen
Ombudsman